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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~757~~ ~~471 195~~ 77

JOHN S. WILLIAMS AND WILLIAM H. GUION, PLAINTIFFS IN ERROR,

vs.

THE STATE OF LOUISIANA, CHARLES CLINTON, AUDITOR, &C., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 6, 1876.

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SUPREME COURT OF THE UNITED STATES.

No. 757.

JOHN S. WILLIAMS AND WILLIAM H. GUION, PLAINTIFFS IN ERROR,

vs.

THE STATE OF LOUISIANA, CHARLES CLINTON, AUDITOR, &C., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a No. 5768. Supreme court of Louisiana.

Filed April 20th, 1875.
(Signed) M. P. JULIAN, *Dy. Clk.*

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA, APPELLEE,
vs.
CHARLES CLINTON, AUDITOR, &C., AND ANtoine Dubuclet, State treasurer, Williams & Guion, intervenors, appellants. } No. 369.

TRANSCRIPT FOR DEVOLUTIVE APPEAL.

A. P. Field, atty. gen'l; Henry C. Dibble, J. B. Cotton, and J. Q. A. Fellows, for plaintiff.
Kennard, Howe & Prentiss for intervenors, appts.
Appeal returnable 3d Monday of April, '75.

1 4618. Supreme court of Louisiana.

Filed March 7, 1873.
(Signed) M. P. JULIAN,
Dep'y Clerk.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANT. DUbuclet, treas'r. } No. 369.

A. P. Field, atty. gen'l; J. Q. A. Fellows, J. B. Cotton, for State.
A. P. Field, atty. gen'l; J. Q. A. Fellows, J. B. Cotton, J. S. Whittaker, W. O. Denegre, for defendants.
Howe & Prentiss, & Alex. Walker, attys. for N. O., M. & T. R. R. Co., intervenors.

2 Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON AND ANTOINE DUBUCLET. } No. 369.

Petition for injunction.—Filed December 31, 1872.

To the honorable the superior district court for the parish of Orleans:

The petition of the State of Louisiana, by the attorney general, who, on behalf of the State, and in his official capacity as aforesaid, respectfully represents that a large number and amount of the appropriations of the legislature of Louisiana, during the sessions thereof, in the years 1871 and 1872, are illegal, unconstitutional, null, and void; that they were in violation of the amendment to the constitution of the State of Louisiana, limiting the State debt to $25,000,000, promulgated December 15, 1870; and because they were without any valid consideration

and made to persons having no legal claim upon the State, to be paid out of the revenues derived from the taxation of the property of
3 citizens and others owning property subject to taxation, and upon which rested no legal or equitable obligation to contribute to the payment thereof, and for other special reasons and grounds of nullity to be set up as to each item of appropriation, as hereinafter set forth and alleged, and which items of appropriation are as follows, to wit:

1. The appropriation of twenty thousand dollars ($20,000) made by act No. 100, approved December 20, 1870, to aid the German Society of New Orleans to establish a house of reception for immigrants under the auspices of that society, and for the further reasons that the conditions of said act have not been complied with.

2. The appropriation of seventy-five thousand dollars ($75,000) for expenses of the State militia, in case of necessity, made in the general appropriation act No. 72 of the session acts of 1871, and for the further reason that no expenses were incurred, nor were any necessary.

3. The appropriation in the same act, No. 72 of 1871, of thirty-one thousand seven hundred and forty dollars ($31,740) for interest on the bonds to the free school fund, act No. 182 of 1857, and for the further reason that there is no legal basis for said appropriation.

4 4. The appropriation in the same act, No. 72 of 1871, of ten thousand seven hundred and twenty dollars ($10,720) to pay interest on the bonds issued for the relief of P. J. Kennedy, under act No. 105 of 1870; and for the further reasons that the said bonds are illegal, null, and void, being issued without any consideration, either in law or equity, and were, in fact, a disguised donation of the moneys of the peop'e, and which the legislature had no right nor power to make.

5. The appropriation in the same act, No. 2 of 1871, of twenty-eight thousand seven hundred and ninety-five dollars and fourteen cents, ($28,795.14,) and the item of fifty thousand dollars, ($50,000,) the first item purporting to be for interest on the United States deposit fund, and the last item purporting to be for interest due the several townships; and for the further reason that there is no foundation in law for said appropriations.

6. The special appropriation in act No. 144 of 1870, of thirty thousand one hundred and eighty-one dollars and eighty-three cents ($30,181.83) to liquidate a pretended claim of Murphy, Terrell & Co.; and for the further reasons that said amount was without consideration and a disguised donation.

5 7. The appropriation in the general appropriation act, No. 22 of 1872, of one hundred thousand dollars ($100,000) to the Citizens' Bank of Louisiana and the Louisiana National Bank, for a loan for the purposes of closing crevasses in 1871; and for the further reasons that said loan was unauthorized by any law, and was not for the benefit of the State.

8. The appropriation under the same act, No. 22 of 1872, of thirteen thousand three hundred and forty-six and $\frac{17}{100}$ dollars, ($13,346.17,) being an appropriation to be used with the unexpended balance of the appropriation made by act No. 72 of 1871; and for the further reasons that the same was unnecessary to pay any legal outstanding indebtedness of the board of public works but was in fact, in part, a disguised donation of the funds of the State treasury, in favor of J. S. Dickey, of three thousand five hundred and eighty-four dollars, ($3,584,) and of Thomas O'Malley of six thousand two hundred and eighty-eight $\frac{96}{100}$, ($6,288.96;) and for reasons hereinbefore generally and specially stated and alleged.

9. The appropriations in the same act, No. 22 of 1872, of thirty-
6 one thousand seven hundred and forty dollars ($31,740) to pay interest on bonds issued to the free-school fund by virtue of act No. 182 of 1857, and also of twenty-eight thousand seven hundred and ninety-five $\frac{14}{100}$ dollars ($28,795.14) to pay interest on the United States deposit fund by virtue of act No. 200 of 1857; and also fifty thousand dollars ($50,000) for interest due the several townships, by virtue of act No. 182 of 1857. For all the reasons heretofore generally given and set up, and further, because there is no foundation in law for the same, and because those funds have been abolished.

10. The appropriation in the same act, No. 22 of 1872, of eight thousand one hundred and sixty dollars, ($8,160,) for interest on bonds issued to the seminary fund created by act No. 182 of 1857, on the ground hereinbefore generally given and set up, and because, further, said bonds were by statute ordered to be cancelled while in the custody of the officers of the State, and were issued contrary to law and for no valid consideration.

11. The appropriation in the same act, No. 22 of 1872, of ten thousand seven hundred and twenty dollars, ($10,720,) for interest on the bonds issued to P. J. Kennedy by virtue of act No. 105 of 1870, on the
7 grounds hereinbefore generally alleged and set up, and on the special grounds set up against a like appropriation in the general appropriation law of 1871, being item No. 4 of this petition.

12. The appropriation in the same act, No. 22 of 1872, of two hundred thousand dollars, ($200,000,) for interest on the bonds issued by the New Orleans, Mobile and Texas Railroad Company, by virtue of act No. 95 of 1871, in exchange for stock in said railroad company, on all the grounds heretofore generally set up: and further, because said appropriation was a disguised donation of the funds of the State, derived from the people by taxation, for the benefit of a private corporation, and was without any consideration: and further, because the governor of the State had no right or authority to subscribe for the stock of said company; and because, further, that said act No. 95 of 1871 attempted to create a debt exceeding one hundred thousand dollars without providing means in the same act for the payment of the same, and is in violation of article 111 of the constitution of the State.

13. The appropriation in the same act, No. 22 of 1872, of one
8 hundred thousand dollars, ($100,000,) to pay the expenses of the State militia for 1872, on the grounds heretofore set up and alleged; and because, further, that no such expenses have been incurred or have been necessary.

14. The appropriation in the same act, No. 22 of 1872, of two thousand nine hundred and seventy $\frac{95}{100}$ dollars, ($2,970.95,) to pay William Wright, on the general grounds hereinbefore set up and alleged, and for the further special reasons urged and set up as against item No. 8 of this petition.

15. Any and all interest-coupons that may be presented for warrant or payment under sections 15, 16, and subsequent sections of act No. 143, to incorporate the New Orleans, Baton Rouge and Vicksburg Railroad Company, approved December 30, 1869, on all the grounds generally set up and alleged in this petition; and further, because all right to claim the issuance of any bonds to said railroad company, or the indorsement thereof, if any such existed, which is denied, was forfeited by non-compliance with the terms and provisions of the said act; and further, because no right existed in favor of said company, the said
9 provisions of the act being the creation of a debt to be paid by the

citizens and other tax-payers of Louisiana for the enrichment of a private corporation and of individuals, and in no way being for the benefit of the people.

16. Any and all interest-coupons attached to bonds issued by virtue of act No. 32, approved February 25, 1870, entitled "An act to provide means for work done, or to be done, on the levees of the State, under contract with the board of public works, by the issue of bonds of the State to the amount of three million dollars, ($3,000,000,) and to provide for the redemption of said bonds, etc.; and any and all of said bonds which may be presented for warrant, payment, or redemption, on the grounds hereinbefore generally set up and alleged; and, further, because the State legislature had no right nor power to contract said loan or incur said obligation; and for the further reasons that the proprietors of property fronting on the water courses of Louisiana subject to overflow had contracted in the original purchase of the property to keep up the levees in front of their respective lands, and had purchased the same, by reason of said condition, at a much reduced price; and because
10 the leveeing and draining of the lands fronting on the water-courses subject to overflow should not be at the expense of the treasury of the State, and paid for out of funds in the treasury derived from taxation on property over the whole State, because it would be to the enrichment of the owners of the lands subject to overflow, making their property much more valuable at the expense of others; that it would be the taking of the property of one citizen for the benefit of another, and not for the public, and without a valid, or, in fact, any consideration whatever, and is in violation of the constitution of the State and of the United States; and that said act No. 32 is unconstitutional, illegal, null, and void, and the bonds issued thereunder are null and void, and not binding in law and upon the State, and are without any valid consideration to the State.

17. Any portion of the instalments required to be paid by virtue of act No. 84, which became a law March, 1870, by virtue of the lapse of time, entitled "An act to authorize the State of Louisiana to subscribe
11 for one thousand shares of the capital stock of the Mississippi Valley Navigation Company," etc., on the grounds hereinbefore set up and alleged; and because, further, there is no power or authority in the State to take stock in any such corporation, or to appropriate the funds of the State to pay for stock so subscribed; that such subscription and payment would be the enrichment of the corporators of said company, and to the detriment and at the expense of the citizens and tax-payers of the State, and be the taking of property of a citizen, not for the public use nor for a just consideration, and is in this respect illegal, null, and void, and violative of the constitution of this State and of the United States, and is a disguised donation to said corporation, and the bonds issued by virtue of said act are illegal, null, and void.

18. Any and all bonds or coupons thereto pertaining or attached which may be presented for warrant, payment, or redemption, issued by virtue of act No. 105, which became a law without the approval of the governor about March 6th, 1870, entitled "An act for the relief of P. J. Kennedy," etc., and appropriating to him one hundred and thirty-four thousand four hundred and eight $\frac{29}{100}$ dollars, ($134,408.29,) on
12 the grounds hereinbefore generally set up and alleged and specially on the grounds hereinbefore set up and alleged against the legality of items No. 4 and 11, and for the further special grounds set up and alleged against items Nos. 16 and 17, the first appropriating $3,000,000 for the construction of levees, etc.; and all the said grounds

and alleged.

are here specially set up and alleged with all the particularity they would be were they set up and alleged in full.

19. Any and all bonds or coupons which may be presented for warrant, payment, or redemption, issued under and by virtue of act No. 106 of 1870, to incorporate the Arkansas and Delta Railroad Company, and especially by virtue of the 15th and subsequent sections of said act, on the grounds hereinbefore generally set up, and specially because the obligation therein incurred was a debt attempted to be created subsequent to the adoption of the amendment to the constitution, limiting the State debt to $25,000,000, and that none of the conditions of said act have been complied with by said railroad company.

20. Any and all bonds, coupons, or other orders or certificates, or other forms of obligation forming the basis of warrants or demands
13 on the State treasury, or for the payment of money therefrom, which may be issued or presented for warrant, payment, or redemption by virtue of any of the provisions of act No 4 relative to the Louisiana Levee Company, etc., approved February 20, 1871, or of the No. 27, ratifying and confirming a contract between the Louisiana Levee Company and the governor of the State, of the same date, approved February 28, 1871, providing for an annual collection by taxation and appropriation to said levee company for twenty-one (21) years of one million dollars and upward each year, in all, twenty-one million dollars, ($21,000,000,) on all the grounds hereinbefore generally and specially set up and alleged, & specially set up and alleged as good grounds of nullity against items Nos. 16 and 17 in this petition, the first being for the issuing of $3,000,000 bonds for levee purposes, etc., and specially because these two acts are violative of the amendments to the constitution limiting the State debt to $25,000,000; all of which grounds of objection, general and special, are here set up and alleged with all the particularity they would have been were they particularly here alleged; and for the further reasons that said act is in violation of articles 114 and 115 of the constitution of the State, and in violation of the
14 Constitution of the United States, as hereinbefore specially set forth.

21. Any and all bonds, coupons, or other certificates calling for warrants, payment or redemption, issued or based upon the provisions of act No. 28, entitled "An act to amend an act incorporating the Southeastern Railroad Company," etc., on the grounds generally hereinbefore set up and alleged, and specially on the grounds set up against items Nos. 16 and 17 of this petition, and specially because said act No. 28 was passed subsequent to the adoption of the amendment to the constitution limiting the State debt to $25,000,000, and this act attempts to create a debt when the said limit of $25,000,000 had already been exceeded, and because said act is in violation of article 111 of the constitution of the State.

22. Any and all instalments presented for warrants or payment growing out of sections 2 and 3 of act No. 29 of 1871, entitled "An act to amend and re-enact an act creating the Mississippi River Packet Company, and authorizing the governor to subscribe twenty-five hundred shares to the capital stock of said company, of $100 each, in all
15 two hundred and fifty thousand dollars, ($250,000,) on all the grounds generally and specially hereinbefore set up and alleged, and as particularly as though said grounds were here particularly set forth, and because it is in violation of article 111 of the constitution, and of the amendment thereto, fixing the limit of the State debt.

23. Any and all warrants required by act No. 31 of 1871, entitled "An

act creating a commission to locate the site for a State house," etc., on the grounds hereinbefore generally and specially set up and alleged, and especially because said act attempts to create a State debt of one million five hundred thousand dollars ($1,500,000) at a time when the public debt exceeded the limit fixed by the amendment to the constitution, and, further, because said act is in violation of article 111 of the constitution of the State.

24. The appropriation under act No. 35 of 1871, providing for the improvement of the navigation of bayous D'Arbonne, and Cornie, etc., for the sum of seventy-five thousand dollars, ($75,000,) on the grounds hereinbefore generally and specially set up and alleged, and because the same was not for a work of general or public utility or
16 necessity, and was the creating of a debt to be paid out of the general funds to be thereafter collected, and for no valid consideration, but for the enrichment of individuals, and was a disguised donation.

25. Any and all bonds, coupons, or other certificates upon which demand may be made for warrant, payment, or redemption, growing out of the provisions of act No. 40, approved March 3, 1871, to incorporate the Alexandria, Homer and Fulton Railroad Company, etc., on the ground hereinbefore generally and specially set up and alleged, and especially the grounds set up against items Nos. 16 and 17 of this petition, and specially because it is violative of article 111 of the constitution and of the amendment thereto limiting the State indebtedness, and, further, because said corporation have failed to comply with the conditions of the act of incorporation.

26. Any and all bonds, coupons, or other certificates of indebtedness upon which demand may be made for warrant, payment, or redemption, growing out of the provisions of act No. 41, which became a law March 1st, 1871, entitled "An act to promote the interest of commerce by establishing the Louisiana Warehouse Company," etc., on all the
17 grounds hereinbefore generally and specially set up and alleged, and especially on the grounds set up specially against the preceding item in this petition.

27. The appropriation of fifty-three thousand five hundred dollars, ($53,500,) made by act No. 46, which became a law March 7, 1871, granting an appropriation of money for removing obstructions from Comite River, etc., on the grounds hereinbefore generally set up and alleged, and specially because the work was for the benefit of individuals, was without consideration, and was never performed.

28. The appropriation of sixty thousand dollars, ($60,000,) made by act No. 58, approved March 21, 1871, amending the act to remove obstructions in the bayou Courtableau, etc., on the grounds hereinbefore specially set up and alleged, and that set up specially against item No. 27, immediately preceding this item.

29. The appropriation made by act No. 70, approved March 24, 1871, of one hundred thousand dollars, ($100,000,) to provide for the clearing out of bayou Portage, etc., on the grounds hereinbefore generally and specially set up and alleged, and specially alleged herein against like appropriations for alleged improvements, and to be considered as
18 herein set forth in all their particularity; and, further, because the same was without consideration, was a disguised donation; and, further, because the work was never done, nor were the conditions of the act ever complied with.

30. Any and all bonds, coupons, or other certificates upon which demand may be made for warrant, payment, or redemption, growing out

of the act No. 95, approved April 20, 1871, entitled "An act to relieve the State from its obligation to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company," etc., on all the grounds hereinbefore generally and specially set up and alleged, and the same are made specially grounds against this item as though fully and particularly here set up and alleged; and specially on all the grounds specially set up against items for works of internal improvements and the guarantee of State aid thereto; and further specially because the attempt is made by this act to create a debt of two million five hundred thousand dollars, ($2,500,000.) when the limit to the State debt of $25,000,000, as fixed by the amendment to the constitution, had been exceeded.

19 31. Any and all bonds, coupons, or other certificates of indebtedness upon which demand may be made for warrant, payment, or redemption, growing out of the following several acts, namely:

First. Act No. 105, approved June 27, 1871, entitled "An act to amend and re-enact section 11 of an act entitled 'An act to incorporate the North Louisiana and Texas Railroad Company,'" etc.

Second. Act No. 106, approved October 25, 1871, entitled "An act relative to the New Orleans and Northeastern Railroad Company," etc.

Third. Act No. 28, approved April 23, 1872, entitled "An act to reduce the debt of the State of Louisiana, and by authorizing the Mississippi and Mexican Gulf Ship-Canal Company to return their State bonds," etc.; and

Fourth. Act No. 32, approved April 22, 1872, entitled "An act to incorporate the Vidalia, Red River and Texas Railroad Company, and grant State aid thereto," etc.

On the grounds hereinbefore generally and specially set up, and as though the same were here particularly and fully set out and alleged, and against each and all of said acts and the appropriations attempted to be made thereunder, or obligations thereby attempted to be incurred.

20 32. Any and all warrants which may have been issued by the late auditor, James Graham, amounting to the sum of one hundred and forty six thousand dollars ($146,000) or upwards, on any contract or contracts made by Henry C. Warmoth, as governor of the State, in which he was not assisted and concurred in by the lieutenant governor and the speaker of the house, or on bills approved by him alone, for the printing of blanks, etc., for the purposes of the election held November 4th, 1872, because the same were entered into and made and issued without the authority and sanction of law; for no valid or legal consideration having passed for said warrants thus issued and put in circulation, and because the said acts and proceedings were an attempted fraud upon the treasury of the State and an usurpation of the functions of government for fraudulent purposes.

Petitioner further represents and avers that the amendment to the constitution of the State promulgated on the 15th of December, 1870, limited the State debt to $25,000,000, and that at that date the debt of the State exceeded $25,000,000, and has at no time since that debt

21 been less than that, but has far exceeded that amount; that every appropriation of the legislature not absolutely requisite and necessary for carrying on the government of the State, and within the actual annual revenues of the State for any one year, and while the State indebtedness exceeds $25,000,000, are wholly unauthorized, unconstitutional, illegal, null, and void, and beyond the power of the legislature to make; that the foregoing items of appropriation and acts of

the legislature creating, or attempting to create, a State debt or obligations to pay money, or to issue any obligations which might eventually result in an obligation to pay money, are beyond the power of the legislature, and all such items of appropriations and the acts hereinbefore set forth are unconstitutional, illegal, null, and void, and of no binding force on the State.

That by said excessive, illegal, and unconstitutional appropriations the revenues of the State have been far exceeded and in great measure diverted from the payment of the legitimate debt and current expenses necessary for the proper carrying on of the State government, and to the great financial embarrassment of the State and to the detriment of the State and the injury of those who have legitimate claims on the revenues of the State and against the State. That a large amount of the above appropriations have not as yet been warranted for by the State auditor, and a still larger amount have not been paid by the State treasurer, but that owing to the pressure of parties interested upon the said officers, they may yield to the demands made upon them, and the auditor may warrant and the treasurer may pay the amounts hereinbefore represented as objectionable, illegal, unconstitutional, null, and void, and without legal consideration, and to the great detriment and irreparable injury to the State, the citizens, and other property-owners in the State, and the legal creditors of the State, unless said officers, to wit, the State auditor, Charles Clinton, and the State treasurer, Antoine Dubuclet, be restrained and enjoined, the first from warranting on the State treasurer and the latter from paying any warrants upon any of the appropriations herein set forth, complained of, and objected to, as illegal, unconstitutional, null, and void, and without legal consideration.

Wherefore, petitioner prays that the said Charles Clinton, State auditor, and Antoine Dubuclet, State treasurer, be served with a copy of this petition, and cited to answer the same; that, considering the premises, they be enjoined and restrained from issuing or paying, or receiving in payment, any bond, coupon, warrant, certificate, or other writing calling for the payment or credit of money in any way connected with or depending upon any of the items complained of and objected to in the foregoing petition, or which are therein alleged to be unconstitutional, illegal, null, and void, and without legal consideration, and as not in law binding upon the State; and that, after all due proceedings, said injunction and restraining order be made perpetual, and all said items of appropriation and indebtedness be decreed unconstitutional, illegal, null, and void; and he further prays for all general and equitable relief.

A. P. FIELD,
Attorney-General.
J. Q. A. FELLOWS,
J. B. COTTON,
Of Counsel.

Petition of intervention.—Filed Jan'y 7th, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, TREAS'R. } No. 369.

To the honorable the judge of the superior district court for the parish of Orleans:

The petition of intervention of the New Orleans, Mobile and Tex

Railroad Company, (lately the New Orleans, Mobile and Chattanooga Railroad Company,) a corporation by and under the laws of the State of Louisiana, as well as the laws of the State of Alabama, and domiciled in the city of New Orleans, respectfully shows:

That on or about the 30th day of December last a petition was filed in this court in the name of the State of Louisiana, by the attorney-general for the purpose of obtaining an injunction against the auditor of public accounts and the State treasurer, forbidding them respectively, the former to draw, and the latter to pay, certain warrants on the treasury of the State.

That on the same day a preliminary injunction was granted by
25 the court, as therein prayed for, which is still in force.

That intervenor is largely interested in said action and injuriously affected thereby, and especially in the matter set forth in sections Nos. 12 and 30 of the said petition, and the said sections in particular will more fully and specifically appear.

That said suit is irregular and defective in form and without any warrant in law.

That the attorney-general is without any authority, in virtue of his office, to institute such an action.

That the judicial department of the government is without lawful power to enjoin and regulate the executive and legislative departments in matters of public policy in the manner attempted to be done by and on behalf of plaintiff in this case.

That the allegations set forth in said petition constitute no legal cause of action as against the just rights of intervenor.

That the bonds described in the said petition of plaintiff, issued to intervenor, are legal and valid, the requirements of the statutes
26 under which they were issued having been fully complied with.

That said bonds were issued according to law, in payment for twenty-five thousand shares, the capital stock of the intervenor's company, which shares have been duly issued to the State of Louisiana, and accepted by the said State, and still held and owned by her.

That there are no proper parties to the said injunction.

That the same was improvidently issued and ought to be dissolved and the action of plaintiff dismissed.

Wherefore your petitioner prays leave to intervene herein for its said interests, and for citation of all the parties to this suit, and that after due legal proceedings had, that the said injunction be dissolved, so far as any bonds issued to the company of intervenor are concerned, or coupons thereon, and that the said suit may be dismissed, and for all other special and general relief.

(Signed) HOWE & PRENTISS,
ALEX. WALKER,
Attorneys for Railway Co.

Order.

Let this petition of intervention be filed.
January 7th, 1873.
(Signed) JACOB HAWKINS, *Judge.*

27 *Rule to dissolve.—Filed Jan'y 7th*, 1873.

STATE OF LOUISIANA
vs.
ANTOINE DUBUCLET ET ALS., THE N. O., M. & T. R. R. Co. } No. 369.

On motion of Howe & Prentiss and Alex. Walker, attorneys for inter-

venor, that the injunction issued herein was improvidently issued, so far as the rights of intervenor are concerned, it is ordered that the attorney-general show cause on Monday, the 13th day of January, 1873, at 11 a. m., why the said injunction, so far as it concerns the bonds & coupons mentioned in sections 12th & 30th of the plaintiff's petition, should not be dissolved, on the following grounds:

1st. There is no evidence before the court to justify any injunction, nor any injunction-bond.

2nd. The attorney-general is without any authority in virtue of his office to institute the suit.

3rd. There are no proper parties to the suit.

4th. The bonds mentioned in said sections 12 & 30 of the plaint-
28 iff's petition were issued to intervenor in exchange & payment for capital stock of intervenor company to the amount of two millions five hundred thousand dollars, which stock was duly issued by said company to the State of Louisiana, and is now held and owned by said State, and cannot be surrendered or transferred without the permission of the general assembly.

5th. There is no warrant of law to authorize this honorable court, or any court to enjoin, obstruct, or regulate the administration of the finances of the State by the legislative and executive departments in the manner attempted by the plaintiff in this case.

6th. That the allegations of the petition constitute no cause of action as against the just rights of the intervenors.

7th. That the allegations of fact in said petition, by which it is sought to be established that the bonds issued to intervenor, are illegal & erroneous.

Answer to rule.—Filed Jan'y 23rd, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, TREAS'R. } No. 369.

29 And now comes the attorney-general, and on behalf of the plaintiff herein, and in answer to the intervention of the New Orleans, Mobile and Texas Railroad Company, says:

That all the allegations in the petition of plaintiff, as set up and alleged against the claims of the N. O., M. & T. R. R. Company, are true, and are here again alleged in answer to said intervention.

That any and all bonds, and the coupons thereto attached, when issued, growing out of or issued by virtue of *of* the provisions of act No. 95, approved April 20th, 1871, are illegal, null and void, and not binding upon the State of Louisiana, nor could the auditor of public accounts warrant for or the treasurer of the State pay any of the said bonds or the coupons attached, because the same are unconstitutional, being issued under said law in violation of the amendment to the constitution limiting the State debt to $25,000,000, promulgated 15th December, 1870, and because they were without valid consideration, and for which the said railroad company had no legal claim upon the State to be paid out of the revenues derived from taxation of the property of citi-
30 zens *and owing* owning property subject to taxation, and upon which rested no legal or equitable obligation to contribute to the payment thereof; and because the conditions of said grant had not been complied with.

That the same were in fact a disguised donation to said railroad company of the people, and which the legislature had no right nor power to make.

That the governor had no authority or right to subscribe for the stock of said company in the name of the State, and because, further, that said act No. 95 was an attempt to create a debt exceeding one hundred thousand dollars, ($100,000,) without providing means in the same act for the payment of the same, and is in violation of articles 110 and 111 of the constitution of the State.

That said act No. 95 is unconstitutional, being in violation of articles 114 and 115 of the constitution of the State and of article 5 of the amendments to the Constitution of the United States.

That the unconstitutional amendment promulgated on the 15th of September, 1870, limited the State debt to $25,000,000, and that
31 at that date the debt of the State exceeded $25,000,000, and has at no time since been less than that sum, but has far exceeded that amount.

That every appropriation of the legislature not absolutely necessary and requisite for carrying on the government of the State, and within the actual revenues of the State for any one year, and while the indebtedness of the State exceeds $25,000,000, are wholly unauthorized, unconstitutional, null and void, and beyond the power of the legislature under the constitution to make.

That the said act No. 95 is obnoxious to all the foregoing objections, and is unconstitutional, illegal, null and void.

That by said act the revenues of the State are attempted to be diverted from the necessary expenditures of the State, and to the detriment of the tax-payers and creditors of the State, and that the perpetuity of the injunction herein is necessary to protect the State from spoilation.

Wherefore he prays that the intervention be dismissed, the injunction so far as the New Orleans, Mobile and Texas Railroad Company
32 be perpetuated, and for all general relief.

(Signed) J. Q. A. FELLOWS,
For A. P. FIELD,
Attorney-General.
J. B. COTTON, *Atty.*

Answer of defendants to rule to dissolve.—Filed Jan'y 29, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, TREAS'R. } No. 369.

And now come the defendants herein, and, for answer to the petition of plaintiff, plead the general issue, and pray to be hence dismissed, and for general relief.

(Signed) W. O. DENEGRE,
Atty. of Respondents.

Admission.—Filed 29th Jan'y, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, TREAS'R. } No. 369.

33 It is admitted that bonds issued to N. O., M. and Texas R. R. Co., mentioned in petition, were issued in exchange for stock of

company of equal amount, and that said stock is still held by the State.

Jan. 25th, 1873.

(Signed) J. Q. A. FELLOWS,
For A. P. FIELD,
Atty. Gen'l.

Peremptory exceptions to rule.—Filed Jan'y 29th, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, treas'r. } No. 369.

And now into court comes the plaintiff in the above-entitled cause and for peremptory exception, founded in law, pleads that the intervenors, the New Orleans, Mobile & Texas R. R. Co. and Geo. A. Sheridan, cannot object to the proceedings as taken in this cause between the plaintiff and defendants.

They cannot object to any irregularities in the suit, and therefore cannot move to set them aside, "nor can they plead exception to dismiss the action."

These intervenors must take the case as they find it.

34 Wherefore your exceptor prays that this peremptory exception be sustained, and the rules taken by the intervenors named herein to dismiss the suit and injunction be dismissed with costs, and for all general relief, &c.

(Signed) A. P. FIELD,
Atty. General.
FELLOWS, COTTON AND WHITTAKER,
Attorneys.

Judgment.

State of Louisiana, superior district court for the parish of Orleans, Tuesday, the 4th day of February, 1873.

Present, the honorable Jacob Hawkins, judge.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, treas'r, New Orleans, Mobile & Texas Railroad Company, intervenors. } No. 369.

Judgment on rule of New Orleans, Mobile and Texas Railroad Company.

35 In the matter of the rule herein taken by the intervenor, the New Orleans, Mobile and Texas Railroad Company, submitted to the court for determination, after deliberation, and for the reasons assigned this day in open court, the court considering the law and the evidence of the plaintiff in rule:

It is ordered by the court that this rule be made absolute, and that the injunction herein issued be dissolved in so far as it concerns the bonds and coupons mentioned in sections 12 and 30 of the plaintiff's petition.

Judgment rendered Feb'y 4th, 1873.

Judgment signed Feb'y 10th, 1873.

(Signed) JACOB HAWKINS,
Judge.

Motion of appeal by State of Louisiana.—Filed Feb'y 18th, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANT. DUBUCLET, treas'r. } No. 369.

36 On motion of the State of Louisiana, through the atty. general, A. P. Field, on suggesting to the court that a judgment was rendered and signed on the rule taken by the intervenor the New Orleans, Mobile and Texas R. R. Co., dissolving the injunction issued in this cause on the 10th of February, 1873, and on further suggesting that your relator feels aggrieved by said judgment and is advised that there is error therein to the prejudice of the State, and as she is dispensed by law from giving bond and security in taking appeal,

It is ordered that a suspensive appeal be granted to the State of Louisiana, returnable to the supreme court on the third Monday of March, 1873, and she be dispensed from giving bond and security.

Motion for appeal of defendants in rule.—Filed Feb. 11th, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, treas'r. } No. 369.

37 On intervention of N. O., Mobile and Texas R. R. Co., to dissolve injunction by intervenors.

On motion of A. P. Field, atty. gen'l, herein appearing for the auditor, Charles Clinton, and A. Dubuclet, treasurer, and on suggesting to the court that they feel aggrieved by the judgment rendered in favor of the intervenor on the rule to dissolve the injunction, signed on the 10th day of Feb'y, 1873, and they are advised that there is error to their prejudice, and they desire an appeal to the supreme court from said judgment in order that it may be revised and reversed, it is therefore ordered that an appeal be granted to the supreme court, returnable on the third Monday of March, 1873, on defendants giving bond and security in the sum of five hundred dollars.

Bond of appeal.—Filed Feb'y 18th, 1873.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, treas'r. } No. 369.

38 Know all men by these presents that we, Charles Clinton, State auditor, as principal, and , as surety, are held and firmly bound unto Jno. Burke, clerk of the superior district court for the parish of Orleans, his sucessors, executors, administrators, and assigns, in the sum of five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals and *and* dated in the city of New Orleans, on this eleventh day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above-bounded Charles Clinton, State auditor, has this day filed a motion of appeal from a final judgment rendered against Charles Clinton, auditor, and Antoine Dubuclet, treasurer, in the suit of State of Louisiana vs. Antoine Dubuclet, dissolving the injunction on the intervention of N. O., Mobile and Texas R. R. Company, No. 369, of the superior district court for the parish of Orleans, on the fourth day of February, 1873, and signed on the 10th day of Feb., 1873:

39 Now, the condition of the above obligation is such, that the above-bound Charles Clinton, State auditor, shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said shall be liable in his place.

(Signed) CHARLES CLINTON, *Auditor.* [SEAL.]
CHARLES CLINTON, *Surety.* [SEAL.]

Signed, sealed, and delivered in presence of—

Agreement of counsel.—Filed Feb'y 18, '73.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANT. DUBUCLET, TREAS'R. } No. 369.

On the intervention of the New Orleans, Mobile and Texas Railroad Co.

40 For the purpose of facilitating the taking of an appeal in this case, and the saving of costs, it is agreed that the printed petition on file in this cause be used in the supreme court, and that the citations and notices on file be excluded from the transcript.

The clerk to copy the following documents, viz:

1st. Intervention of the railroad co.
2nd. Rule to dissolve injunction.
3rd. Answer to rule.
4th. Answer of defendants.
5th. Admission.
6th. Peremptory exception.
7th. Judgment.
8th. Motions or petitions of appeals.
9th. Bonds.
10th. Agreement.

(Signed) A. P. FIELD, *Att'y-Gen'l.*
FELLOWS, COTTON AND WHITTAKER, *Of Counsel.*

Endorsement on foregoing agreement.—Filed Feb. 19th, 1873.

I consent to within, provided I have permission to use any other original papers I may wish in supreme court.

(Signed) W. W. HOWE, *Atty.*

Clerk's certificate.

41 I, John Burk, clerk of the superior district court for the parish of Orleans, do hereby certify that the foregoing pages contain a true and

correct transcript of all proceedings had (as per agreement of counsel, copied on page of this transcript) in the cause wherein the State of Louisiana is plaintiff; Charles Clinton, auditor, and Ant. Dubuclet, treasurer, are defendants, and the N. O., Mobile, and Texas Railroad Company is intervenor, and of the No. 369 of the docket of the said court.

In testimony whereof I hereunto set my hand and affix the impress of the seal of the said court, at the city of New Orleans, this 28th day of February, in the year of our Lord one thousand eight hundred and seventy-three, and the ninety-seventh year of the Independence of the United States.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

42 Supreme court of Louisiana.

Case continued.—Minutes, Saturday, March 29, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANTOINE DUBUCLET, treasurer. } No. 4618.

This case was ordered by the court to be continued, with preference.

Case submitted.—Minutes, Saturday, April 26, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE DUBUCLET, treasurer. } No. 4618.

This case was called for trial, and having heard argument from J. Q. A. Fellows, esq., of counsel for plaintiff & appellant, and William H. Howe, esq., of counsel for the intervenor, appellee herein,

43 The court took the same under advisement upon the brief now on file for appellee and the briefs to be filed on behalf of both parties, by counsel, within 15 days from this date.

Decree.—Minutes, Friday, May 23, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor Justice Howell pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE DUBUCLET, treasurer.

Appeal from the superior district court for the parish of Orleans.

Judgment affirmed.

Opinion.—Filed May 23, 1873.

STATE
vs.
C. CLINTON, AUDITOR, & A. DUBUCLET, TREASURER; N. O., M. & T. R. R. Co., int'r. } No. 4618.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice HOWELL:

The State, on the petition of the attorney-general, having enjoined the auditor & treasurer from issuing warrants for the payment of interest on and from paying quite a list of the obligations of the State, & prayed to have the appropriations therefor & the said indebtedness declared null, the New Orleans, Mobile & Texas Railroad Company intervened in the suit, & moved to dissolve the injunction so far as it applied to the bonds of the State issued to said company. The grounds of the injunction in this respect are that the appropriation for the payment of the coupons of said bonds is a disguised donation of the funds of the State to a private corporation; that the governor had no authority to subscribe for the stock of said company, & the act 95 of 1871, by virtue of which the said bonds were issued, attempts to create a debt exceeding $100,000 without providing adequate means for its payment, as required by art. 111 of the State constitution, & also in excess of the constitutional limitation to the State indebtedness.

The injunction was dissolved as to the intervenor, & the other parties appealed.

It is contended on behalf of appellee, & we think correctly, that the State cannot sue to annul the bonds in question without first tendering back the stock which it is admitted has been received by the State in exchange for the bonds. There is not even an obligation of such tender, which it is suggested the legislature alone is competent to make or authorize.

Judgment affirmed.

I was not present at the consultation at which this case was decided, and therefore I took no part in this decision.

(Signed) W. G. WYLY.

Petition for rehearing.—Filed May 30th, 1873.

Rehearing granted.—Minutes, Saturday, May 31, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor the chief-justice pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE DUBUCLET, TREASURER. } No. 4618.

It is ordered that the rehearing applied for in this case be granted.

Orleans, do hereby [illegible]

46 *Cause submitted.—Minutes, Wednesday, November* 19, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, & A. DUBUCLET, treasurer. (On rehearing.) } No. 4618.

This case was called for trial and submitted to the court, by counsel, upon the briefs and papers now on file.

Decree.—Minutes, Monday, April 6, 1874.

The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor Judge Howell pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE Dubuclet, treasurer; New Orleans, Mobile & Texas Railroad Co., intervenor. } No. 4618.

Appeal from the superior district court for the parish of Orleans.

It is ordered that our decree herein be set aside, that the judg-
47 ment appealed from be reversed, and this case be remanded for the taking of evidence, and to be proceeded in according to law.

Opinion.—Filed April 6th, 1874.

STATE OF LOUISIANA
vs.
C. CLINTON, AUDITOR, ET ALS., N. O., M. & T. R. R. Co., int'or. } No. 4618.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice HOWELL, (on rehearing:)

The doctrine of tender was improperly applied in our former opinion. The State did not sue to annul the contract of sale and recover back the bonds given as the price. The law-officer of the State, representing his principal, simply asked that the fiscal agents of the State be prohibited from paying the bonds and coupons described in the petition, on the ground, among others, that the laws authorizing the issuance of the bonds and making appropriations to pay the coupons are unconstitutional. The suit was not against the holders of the bonds or the parties to the contract, and there was no one to whom the tender of the certificates of stock could be made. The injunction or prohibition is-
48 sued on the petition of the attorney-general made it legally impossible, while it existed, for the fiscal agents to pay, and in this

way only were the rights of the intervening company affected, and the necessity imposed on the company to take some legal proceedings to obtain payment. They choose to intervene in these proceedings in order to assert their rights, and remove the obstructions to their access to the State treasury.

They are, therefore, not in a position to plead that a tender of the stock should have been made to them before the issuance of the injunction herein, although it practically closed the treasury to them.

But any judgment in the suit to which they were not made parties would not have been res judicata as to them. The question arises, are they, having made themselves parties, entitled to have the injunction removed, so far as it affects them? The case is not without difficulty. It is submitted on the pleadings, with the single admission that the State holds the certificate of stock, made, we presume, with reference to the plea of tender, and we are expected to determine the rights of the parties in interest, vast as they may be, upon the face of the papers. It is contended on behalf of the State & the people of the State
49 that the obligation of the State to indorse the second-mortgage bonds of the intervening company, and in lieu of which the purchase of stock was substituted, was contingent, and that the conditions upon which that obligation was to be fixed had failed prior to the passage of the act authorizing the purchase of the stock and issuance of the bonds to pay for it, and hence the issuance of the bonds was the creation of a debt, in violation of the prohibitive amendment to the constitution. This failure is said to be notorious, to wit, the non-construction of the branch road, or any part thereof, within the time prescribed by act 26 of 1869, under the provisions of which the company's bonds were to be guaranteed. If it be true that at the date of the said act No. 95 the obligation of the State in favor of the railroad company was extinguished, or had lapsed, the said act 95 authorizing the issuance of the bonds in question was the creation of a new debt; but we are not prepared to say that such a fact may be judicially noticed, even in behalf of the public. But its importance is such that we are unwilling to hold the public responsible for the omission to furnish the necessary proof, and we have concluded to remand the case for evidence on the point, and such other evidence & proceedings as may
50 be appropriate.

It is therefore ordered that our decree herein be set aside; that the judgment appealed from be reversed, and this case be remanded for the taking of evidence, and to be proceeded in according to law.

APRIL 10TH, 1874.

Upon our attention being specially called, by intervenor's counsel, to the various acts of the legislature relative to the New Orleans, Mobile and Texas Railroad Company, we find that the hypothesis as to the extinguishment of the State's contingent liability, upon which we based our decree, cannot probably be supported; but we are none the less indisposed to decide the case in its present condition, as there are other important matters involved, and we cannot resist the conviction that justice requires the case to be heard again in the court of the first instance, where it can be fully and fairly presented.

In saying this, we do not wish to be understood as sanctioning a second application for rehearing.

51 State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR OF PUBLIC ACcounts, and Antoine Dubuclet, State treasurer, The New Orleans, Mobile & Texas Railroad Company & Williams & Guion, intervenors. } No. 369.

(For previous proceedings see transcript No. 4618 of supreme court.)

PROCEEDINGS IN REGARD TO APPOINTMENT OF EXPERTS, AUDITORS, & REFEREES, &C., &C.

Motion to appoint experts, auditors, &c.—Filed 23d June, 1873.

Sup. dist. court.

THE STATE OF LA.
vs.
CHARLES CLINTON & ANTOINE DUBUCLET. } No. 369.

On motion of A. P. Field, attorney-general of the State of Louisiana, and upon suggesting to the court that the matters involved in
52 this suit are of high public concernment and demand an accurate inquiry into the accounts of the State with regard to the obligations specifically detailed in the petition herein filed, by persons versed in the knowledge of such accounts, in order to afford the court such information as may be necessary to enable it to do justice in the premises,

It is ordered that the following persons, to wit, Moses Greenwood, John Phelps, Jno. R. Clay, J. C. Denis, Louis Schneider, J. B. Cotton, Geo. L. Bright, Jos. P. Hornor, and B. F. Joubert, be, & are hereby, appointed experts, auditors, & referees, to examine & report upon the matters involved in this suit; that after taking an oath to perform their functions in the premises, the parties to this suit wishing to produce witnesses before such experts, auditors, & referees may obtain process to that effect from the clerk of this court, and that within a delay of days the said experts, auditors, & referees do report to the court the results of their examinations in the premises, pursuant to the provisions of the law & the article of the code of practice in such case made & provided.

Supplement'l petition to appoint auditors, &c.—Filed 24th June, 1873.

53 STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUD'R, AND ANTOINE DUbuclet, treas'r. } No. 369.

To the hon. the judge of the sup. dist. ct. in & for the parish of Orleans:

The supplemental & amended petition of the State of Louisiana, by and through its governor, Wm. Pitt Kellogg, respectfully represents:

That the original suit was instituted to prevent the payment of in-

terest on obligations therein set forth, which had been contracted without the color of law or constitutional right, and to prevent the defendants from issuing bonds, certificates, and other State obligations under laws stated in said petition, which have no legal or constitutional entity or existence whatsoever.

Your petitioner represents that since the filing of said petition and the order of injunction thereunder, he has examined the books of the auditor and treasurer as to the financial condition of the State, and has ascertained that there are other and many claims, debts, obligations, warrants, and certificates outstanding against the State that were issued by the officers under petitioner's predecessor, and which should not be paid to the holders thereof; that many of such obligations are
54 fraudulent and issued without any consideration therefor; that bonds, subscription of stocks, certificates, and other obligations issued to corporations for various purposes, in violation of the law and of the constitution, and without any consideration therefor, and that it is necessary and important that their legality, constitutionality, and the consideration given therefor and the purposes and objects of said appropriations should be critically examined and inquired into.

Your petitioner further represents that it is absolutely necessary the entire State debt, the origin, consideration, legality, and constitutionality of each and every obligation thereof should be closely examined and reported to this court, to the end that this court may pass upon such report in order that your petitioner and the legislature of Louisiana, at its ensuing session, may have some data upon which to act.

Wherefore your petitioner represents and prays that auditors and examiners learned in the law be appointed to inspect and examine into the origin, condition, consideration, legality, and constitutionality of the entire State debt, and all and every part thereof, and ordered to report to this hon. court at the earliest day the result of their investigation; that this supplemental and amended petition be permitted
55 to be filed and the parties defendant thereto notified & informed thereof.

(Signed) A. P. FIELD,
Attorney-General.
(") J. Q. A. FELLOWS,
(") J. B. COTTON,
Of Counsel.

Order on petition.

Let this supplemental and amended petition be filed and parties notified, and let the auditors named in the motion & order of June 23d, 1873, be appointed auditors & examiners for the purposes and objects embraced in the within petition.

New Orleans, June 24th, 1873.

(Signed) JACOB HAWKINS, *Judge.*

Resignation of J. B. Cotton as auditor.—Filed June 25th, 1873.

Superior dist. court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, ET AL. } No. 369.

Now into court comes the undersigned and begs leave to respectfully

It is ordered that the foregoing [illegible]

decline the appointment of the position of auditor, as he is attorney of record in this case.

June 25th, 1873.

(Signed) J. B. COTTON.

56 (Endorsed:) Resignation accepted June 25th, 1873. (Signed) Jacob Hawkins, judge.

Order appointing B. F. Flanders auditor.—Filed 26th June, 1873.

Superior district court, parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, ET AL. } No. 369.

The court, considering the declination of Jno. B. Cotton, esq., to act as auditor and expert herein, ordered that Benj. F. Flanders be, and he is hereby, appointed to act as auditor and expert in place of said Jno. B. Cotton, and that said Flanders be notified hereof.

Declination of Geo. L. Bright to act as auditor.—Filed July 5th, 1873.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, ET ALS. } No. 369.

57 The undersigned, appointed by the court expert, auditor, and referee in this cause, respectfully declines to accept the appointment.

New Orleans, June 26th, 1873.

(Signed) GEO. L. BRIGHT.

Amended petition to appoint add'l auditors.—Filed 23d July, 1873.

To the hon. the judge of the superior district court for the parish of Orleans:

The supplemental and amended petition of the State of Louisiana respectfully represents that John Phelps, Joseph G. Hornor, and Geo. L. Bright were appointed auditors, with others, to examine and report the condition, reality, and legality of the State indebtedness, and they having declined said appointment your petitioner represents that it is necessary that other competent accountants should be appointed to act in the place and stead of said parties.

Wherefore your petitioner prays this amended petition be filed, and that three additional auditors be appointed to act in connection with those that have heretofore been appointed.

(Signed) J. Q. A. FELLOWS,
Atty.-Gen'l ad interim.

(Signed) J. B. COTTON, *of Counsel.*

58 *Order on petition.*

Let this amended petition be filed, and let Robert Watson & Hippo-

lite Peralta be appointed auditors and examiners to report the condition and legality of State indebtedness, as prayed for in original amended petition.

New Orleans, July 23d, 1873.

(Signed) JACOB HAWKINS, *Judge.*

Petition to appoint Jno. A. Stevenson expert.—Filed July 28th, 1873.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANTOINE DUBUCLET, treas'r. } No. 369.

The petition of the State represents that there is a vacancy in the board of examiners appointed herein, by the resignation of Joseph P. Hornor, esq., and prays that it be filled, and suggesting the name of John A. Stevenson as a suitable person to fill such vacancy.

(Signed) J. Q. A. FELLOWS,
Atty. General ad interim.

Oaths of experts not copied—(waived.)

59 *Report of auditor, &c.—Filed 27 Dec'r*, 1873.

(See printed copy hereto attached.)

Writ of injunction.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON AND ANT. DUBUCLET. } No. 369.

The State of Louisiana to Chas. Clinton & Ant. Dubuclet, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the superior district for the parish of Orleans, from issuing or paying or receiving in payment any bonds, coupons, warrants, certificates, or other item calling for the payment or credit of money depending upon any of the items mentioned in the petition herein filed. And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, the 31st day of December, in the year of our Lord eighteen hundred and seventy-two, and in the ninety-seventh year of the Independence of the United States.

[SEAL.] (Signed) O. M. TENNISON,
Dy. Clerk.

60 *Sheriff's return.—Filed 9th Jany.*, 1873.

Received December 31st, 1872, and on the 31st day of Dec'r, 1872, served a true copy of within writ of injunction on Antoine Dubuclet, defendant herein, in person.

Returned same day. Sh'ff's fees, $2.00.

(Signed) BEN. C. IRVIN,
Dy. Sh'ff.

And on the 2nd day of January, 1873, at 9¼ o'clock a. m., served a true copy of within injunction on Charles Clinton, defendant herein, through W. L. Campbell, chief clerk at said Clinton's office, corner Royal & Conti streets, said Chas. Clinton being absent from his office at time of said service, all of which facts I ascertained by interrogating said W. L. Campbell.

Returned same day. Sheriff's fees, $2.00.

(Signed) BEN. C. IRWIN,
Dy. Sh'ff.

Supplemental petition for injunction.—Filed October 16th, 1873.

Superior dist. court.

THE STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, AND ANTOINE DUBUCLET, TREASURER. } No. 369.

The supplemental petition of the State of Louisiana respectfully represents:

61 That all allegations in their original petition are true and correct, and in addition thereto that there are now in the hands of certain persons, to petitioner unknown, certain bonds issued by the New Orleans, Mobile & Texas Railroad Co., or by its predecessor, the New Orleans, Mobile & Chattanooga Railroad Co., of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, with interest-coupons attached, having forty or fifty years to run, issued about the 1st of July, 1871, and subsequently numbered consecutively from one upwards to the number of seven hundred and fifty or more, and bearing on the back of said bonds the printed guarantee or the State of Louisiana for the payment of the principal & interest should said company fail to pay the same, the said bonds purporting to be thus guaranteed by the signature of the governor thereto, under the provisions of act No. 26 of the legislature, approved February 17th, 1869, and bearing mortgage on the road and rolling-stock of said company, subject to no other lien or privilege than a first mortgage of twelve thousand five hundred dollars per mile, which said corporation had under the provisions of said act the right reserved to make and issue.

62 Petitioner further avers that one of the conditions by which the State could be called upon to guarantee the payment of said bonds and the interest thereon was that a section of forty miles of said road should be completed within twelve months of the survey and location of the road from the west bank of the Mississippi River to the boundary line between the State of Louisiana and State of Texas, which time expired on the 18th of January, 1871, and to the Sabine River by the 18th January, 1873, at which times said section of forty miles nor said road to the Sabine River respectively were not completed, and that by the terms of the law authorizing the guarantee "none of said second-mortgage bonds for or upon that portion of said main line of railroad not constructed within the time limited shall be guaranteed by the State of Louisiana;" that any guarantee by the governor of the State of Louisiana of the payment of the principal or interest of said second-mortgage bonds of said railroad company was obtained by misrepresentation, frauds, and collusion, and by reason of the premises is absolutely null and void & of no effect, so far as the said guarantee is con-

63 cerned or the liability of the State of Louisiana therefor, and to the full extent of the bonds so endorsed and guaranteed.

lite Peralta be appointed auditors and examiners to report the condition and legality of State indebtedness, as prayed for in original amended petition.

New Orleans, July 23d, 1873.

(Signed) JACOB HAWKINS, *Judge.*

Petition to appoint Jno. A. Stevenson expert.—Filed July 28th, 1873.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANTOINE DUBUCLET, treas'r. } No. 369.

The petition of the State represents that there is a vacancy in the board of examiners appointed herein, by the resignation of Joseph P. Hornor, esq., and prays that it be filled, and suggesting the name of John A. Stevenson as a suitable person to fill such vacancy.

(Signed) J. Q. A. FELLOWS,
Atty. General ad interim.

Oaths of experts not copied—(waived.)

59 *Report of auditor, &c.—Filed 27 Dec'r, 1873.*

(See printed copy hereto attached.)

Writ of injunction.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON AND ANT. DUBUCLET. } No. 369.

The State of Louisiana to Chas. Clinton & Ant. Dubuclet, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the superior district for the parish of Orleans, from issuing or paying or receiving in payment any bonds, coupons, warrants, certificates, or other item calling for the payment or credit of money depending upon any of the items mentioned in the petition herein filed. And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, the 31st day of December, in the year of our Lord eighteen hundred and seventy-two, and in the ninety-seventh year of the Independence of the United States.

[SEAL.] (Signed) O. M. TENNISON,
Dy. Clerk.

60 *Sheriff's return.—Filed 9th Jany., 1873.*

Received December 31st, 1872, and on the 31st day of Dec'r, 1872, served a true copy of within writ of injunction on Antoine Dubuclet, defendant herein, in person.

Returned same day. Sh'ff's fees, $2.00.

(Signed) BEN. C. IRVIN,
Dy. Sh'ff.

And on the 2nd day of January, 1873, at 9¼ o'clock a. m., served a true copy of within injunction on Charles Clinton, defendant herein, through W. L. Campbell, chief clerk at said Clinton's office, corner Royal & Conti streets, said Chas. Clinton being absent from his office at time of said service, all of which facts I ascertained by interrogating said W. L. Campbell.

Returned same day. Sheriff's fees, $2.00.

(Signed) BEN. C. IRWIN,
Dy. Sh'ff.

Supplemental petition for injunction.—Filed October 16th, 1873.

Superior dist. court.

THE STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, AND ANTOINE DUBUCLET, TREASURER. } No. 369.

The supplemental petition of the State of Louisiana respectfully represents:

61 That all allegations in their original petition are true and correct, and in addition thereto that there are now in the hands of certain persons, to petitioner unknown, certain bonds issued by the New Orleans, Mobile & Texas Railroad Co., or by its predecessor, the New Orleans, Mobile & Chattanooga Railroad Co., of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, with interest-coupons attached, having forty or fifty years to run, issued about the 1st of July, 1871, and subsequently numbered consecutively from one upwards to the number of seven hundred and fifty or more, and bearing on the back of said bonds the printed guarantee or the State of Louisiana for the payment of the principal & interest should said company fail to pay the same, the said bonds purporting to be thus guaranteed by the signature of the governor thereto, under the provisions of act No. 26 of the legislature, approved February 17th, 1869, and bearing mortgage on the road and rolling-stock of said company, subject to no other lien or privilege than a first mortgage of twelve thousand five hundred dollars per mile, which said corporation had under the provisions of said act the right reserved to make and issue.

62 Petitioner further avers that one of the conditions by which the State could be called upon to guarantee the payment of said bonds and the interest thereon was that a section of forty miles of said road should be completed within twelve months of the survey and location of the road from the west bank of the Mississippi River to the boundary line between the State of Louisiana and State of Texas, which time expired on the 18th of January, 1871, and to the Sabine River by the 18th January, 1873, at which times said section of forty miles nor said road to the Sabine River respectively were not completed, and that by the terms of the law authorizing the guarantee "none of said second-mortgage bonds for or upon that portion of said main line of railroad not constructed within the time limited shall be guaranteed by the State of Louisiana;" that any guarantee by the governor of the State of Louisiana of the payment of the principal or interest of said second-mortgage bonds of said railroad company was obtained by misrepresentation, frauds, and collusion, and by reason of the premises is absolutely null and void & of no effect, so far as the said guarantee is con-

63 cerned or the liability of the State of Louisiana therefor, and to the full extent of the bonds so endorsed and guaranteed.

Petitioner further represents, that it is represented that the first and all subsequent endorsements and guarantees of said bonds were made or pretended to be made under joint resolution No. 94, approved April 18th, 1871, which purports to authorize the endorsement and guarantee of said bonds by the State, "whenever the said corporation shall, from time to time, complete ten miles of its road in the manner provided for in the act" originally authorizing this endorsement & guarantee, which provision of said joint resolution is in violation of articles 114 & 115 of the constitution of the State, and renders especially illegal, null, and void any such endorsement and guarantee of said bonds above the first five hundred bonds, and that the entire endorsement and guarantee of said bonds is in violation of the third amendment to the constitution of the State limiting the State debt to $25,000,000; that the failure of said company to complete the said first section of forty miles, and of said main line of railroad west of the Mississippi River, within the time fixed in said contract, absolved the State from all obligation
64 to endorse and guarantee said bonds, and that the subsequent enactment in said joint resolution No. 94 was an attempted increase of the State debt, in violation of said constitutional amendment, and in a sum exceeding one hundred thousand dollars, without providing any means for the payment of the same, in violation of article 111 of the constitution of the State.

Petitioner further represents, that the auditor of the State is issuing his warrants, and the treasurer is paying the coupons on said bonds out of funds in the State treasury and to the detriment thereof.

Wherefore petitioner prays that this supplemental petition be filed, and that the said Charles Clinton, auditor, and Antoine Dubuclet, treasurer, be enjoined from warranting for or paying any of the coupons or bonds issued by the New Orleans, Mobile and Texas, or New Orleans, Mobile & Chattanooga Railroad Company, known as the 2nd-mortgage guarantee bonds, the same as described in the foregoing petition, and petitioner further prays that, after all due proceedings, this injunction be made perpetual, and for general relief.

(Signed) A. P. FIELD,
Atty. General.

65 (Signed) J. Q. A. FELLOWS & J. B. COTTON,
Of Counsel.

Order on supplement'l petition.

The State being dispensed from giving bond & security, let the injunction issue as within prayed for.

This the 16th day of October, 1873.

(Signed) JACOB HAWKINS,
Judge.

Writ of injunction.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANT. DUBUCLET, treasurer. } No. 369.

State of Louisiana to Charles Clinton, auditor, and Ant. Dubuclet, treasurer, &c., greeting:

You are hereby commanded, enjoined, and restrained, in the name of

the State of Louisiana and of the superior district court for the parish of Orleans, from warranting for or paying any of the coupons or bonds issued by the New Orleans, Mobile & Texas, or New Orleans, Mobile & Chattanooga Railroad Company known as the 2nd-mortgage
66 guarantee bonds, of one thousand dollars each, bearing eight per cent. per annum interest, payable semi-annually, with interest-coupons attached, having forty or fifty years to run, issued about 1st of July, 1871, and subsequently numbered consecutively from one up to the number of seven hundred and fifty or more, and bearing on their back the printed guarantee of the State of Louisiana, for the payment of the principal and interest should said company fail to pay the same, the said bonds purporting to be thus guaranteed by the signature of the governor thereto, under the provisions of act No. 26 of the legislature, approved February 17th, 1869, and bearing mortgage on the road and rolling-stock of said company, subject to no other lien or privilege than a first mortgage of twelve thousand five hundred dollars per mile, which said corporation had, under the provisions of said act, the right reserved to make and issue. And you are so enjoined until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans, this day of , in the year of our Lord eighteen hundred and seventy, and in the ninety- year of
67 the Independence of the United States.

[SEAL.] *Clerk.*

Sheriff's return.

Received October 17th, 1873, at 11.16 a. m., and at 20 minutes of 12 o'clock m., on the same day, month, & year, I served a copy of within writ of injunction on Ant. Dubuclet, State treasurer, and also a copy on Charles Clinton, esq., State auditor, in person.

Returned same day. Sheriff's fees, $4.00

(Signed) M. McNAMARA, *Dy. Sh'ff.*

Citation for Chas. Clinton, auditor.

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, ANT. DUBUCLET, treas'r. } No. 369.

Hon. Chas Clinton, auditor, &c.:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the
68 superior district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, the 16th day of October, in the year of our Lord 1873.

[SEAL.] (Signed) J. CORPREW, *Dy. Clerk.*

Sheriff's return.—Filed 22d October, 1873.

Received Oct. 18th, 1873, and on the twentieth day of the same month and year served copies of the within citation and accompanying petition on Charles Clinton, State auditor, one of the defendants herein, by leaving the same at his office, corner of Carondelet & Union streets, in the hands of F. M. Sholtz, his chief clerk, who informed me that the said Clinton was absent from the city at the time of this service.

Returned same day. Sh'ff's fees, $2.00.

(Signed) PHIL. LACOSTE, *Dy. Sh'ff.*

Citation for A. Dubuclet, treas'r.

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

69 STATE OF LOUISIANA *vs.* CHAS. CLINTON, AUD'R, & ANT. DUBUCLET, treas'r. } No. 369.

To Hon. Ant. Dubuclet, treas'r, &c.:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, the 16th day of October, in the year of our Lord 1873.

[SEAL.] (Signed) J. CORPREW, *Dy. Clerk.*

Sheriff's return.

Received Oct. 17th, 1873, and on the same day, month, and year I served a copy of within citation and accompanying petition on Hon. Antoine Dubuclet, state treasurer, in person.

Returned same day. Sh'ff's return, $2.00.

(Signed) M. McNAMARA, *Dy. Sh'ff.*

Supplemental answer to intervention of N. O., Mobile & Texas Rail-
70 *road Company.—Filed 17th April*, 1874.

Superior district court.

THE STATE OF LOUISIANA *vs.* CHS. CLINTON, AUDITOR, & ANT. DUBUCLET, treasurer. } No. 369.

The supplemental & amended answer of the plaintiff herein to the intervention of the New Orleans, Mobile & Texas Railroad Company, reiterating *reiterating* & re-*arresting* all the allegations and grounds of defence set up in the original answer to said intervention, and all the grounds of nullity against the bonds of said company forming the basis of said intervention, which appears in the petition of plaintiff, for further answer says:

That the condition upon which said bonds were claimed and issued were never complied with on the part of the said company, nor have those conditions since been complied with, and that the issue of said bonds was a fraud upon the State and the people of the State. That the road from Vermillionville to Shreveport, the completion of which formed the basis upon which the bonds were to be issued, has never been com-
71 pleted, nor begun, nor surveyed, even preliminarily, and that the time has long since elapsed in which the line of said road was to have been surveyed and the construction of said road commenced; that the issuing of said bonds was, by a combination between the officers of said company receiving them and the officers of the State issuing them, to defraud the State out of the amount of said bonds to the extent of the same, say two and one-half million of dollars.

That the issue of said bonds constituted an increase of the State debt, when the same had already exceeded the constitutional limit of twenty-five million dollars.

That said bonds, besides being a fraud upon the State, were for no consideration whatever, either present or prospective, but was purely and simply a disguized donation; that the pretended certificate of stock for twenty-five thousand shares was utterly worthless, & purports to be for stock in a company which never had any stock nor any capital, but was trading and doing business on credit at the time said certificate was issued, was utterly bankrupt, and wholly incapable of performing
72 any of its obligations. That the plaintiff utterly denies any validity to the transaction for the exchange of said $2,500,000 of bonds for the certificate of 25,000 shares of stock, and tenders a return of said certificate, and demands the return and cancellation of said bonds and a decree of their nullity.

Wherefore petitioner prays leave to file this amended & supplemental answer, and prays, as in the former answer & in reconvention, that the injunction be perpetuated, the intervention be dismissed, and that there be judgment decreeing the two million five hundred dollars of bonds, with all the coupons attached, issued to the New Orleans, Mobile & Texas Railroad Company under act No. 95, of 1871, fraudulent, issued in violation of the constitution, without consideration, and absolutely null & void, and for costs and all general relief.

(Signed) A. P. FIELD,
Attorney-General.
(") J. Q. A. FELLOWS,
(") J. B. COTTON,
Of Counsel.

Order.

Let this answer to the intervention of the New Orleans, Mobile
73 & Texas Railroad Company be filed.

(Signed) JACOB HAWKINS, *Judge.*

Motion for commission by intervenor.—Filed 18th April, 1874.

Superior district court.

STATE, &C., *vs.* CHAS. CLINTON ET AL., N. O., MOBILE & T. R. R. Co., intervenor. } No. 369.

On motion of Howe & Prentiss, and on suggesting that the testimony

of W. S. Williams and other witnesses in the city of New York is material on the trial hereof in the issues raised by the answer of the plaintiff:

Ordered, that a commission issue to any Louisiana commissioner in the city of New York to take the testimony of said witnesses, and that the proceedings herein as to trial of said issues be stayed for thirty days.

Affidavit annexed to motion.

Wm. W. Howe, one of the attorneys for intervenor, being duly sworn, says, that the suggestions of the foregoing motion are true, as deponent is informed and verily believes.

(Signed) W. W. HOWE.

Sworn before me April 18th, 1874.

(Signed) J. J. HANNON, *Dy. clk.*

74 *Order & continuance.—Minutes 19th May*, 1874.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, ET AL. } No. 369.

This case, fixed for this day, was ordered to be continued by preference.

Motion & order for subpœna duces tecum.—Filed 15th June, 1874.

Superior district court.

STATE, &C.,
vs.
CHAS. CLINTON, N. O., MOBILE & TEXAS R. R. Co., intervenor. } No. 369.

On motion of Howe & Prentiss, attorneys for intervenor: Ordered, that a subpœna duces tecum issue herein to P. G. Deslonde, secretary of state, to appear as a witness herein on the 16th inst., at 11 a. m., and bring with him—

1st. Certificate in regard to the beginning of work on railroad from Vermillionville to Shreveport, filed October 23d, 1871, in office of secretary of state.

2. Agreement filed by said railroad company under section 1st of act 95, of 1871.

75 *Subpœna duces tecum.*

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CLINTON, & N. O., M. & T. R. R. Co., INT'OR. } No. 369.

You are hereby commanded, in the name of the superior district court for the parish of Orleans, to bring with you and produce in open court, on Tuesday, the 16th June, 1874, at the hour of 11 a. m., to be used as evidence at the trial of the above-entitled case, by the intervenor therein:

1. Certificate in regard to the beginning of work on railroad from Vermillionville to Shreveport, filed 23d October, 1871, in office of secretary of state.

2. Agreement filed by said railroad company under section first, of act 95, of 1871.

And herein you are not to fail under penalty of the law.

Witness the honorable Jacob Hawkins, judge of the said court, this fifteenth day of June, 1874.

[SEAL.] (Signed) P. E. BURKE,
Deputy Clerk.

76 *Sheriff's return.—Filed 17th June*, 1874.

Received June 15th, 1874, and on the same day served a copy of within subpœna duces tecum on P. G. Deslonde, secretary of state, in person.

Returned same day. Shff.'s fees, 50 cts.

(Signed) HENRY BENIT,
Dy. Sheriff.

Order & continuance.—Minutes 16th June, 1874.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, N. O., MOBILE & TEXAS Rail R. Company, intervenor. } No. 369.

This case, fixed for this day, was ordered to be continued to the 29th inst.

Motion to continue.—Filed 27th June, 1874.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON. N. O., MOBILE & TEXAS Railroad Co., intervenor. } No. 369. Motion to continue.

On motion of W. W. Howe, one of intervenor's counsel, and
77 suggesting the absence of John A. Campbell, the senior counsel of intervenor, ordered that this case, set for Monday, 29th instant, be continued.

Order & continuance.—Minutes 29th June, 1874.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, N. O., MOBILE & TEXAS Railroad Co., intervenor. } No. 369.

This cause, fixed for this day for trial, was ordered to be continued.

Intervention of Williams & Guion.—Filed November 3rd, 1874.

Superior district court, parish of Orleans.

THE STATE, &C.,
vs.
CHARLES CLINTON, &C. } No. 369.

To the Hon. J. Hawkins, judge:

The petition of intervention of Williams & Guion, a commercial firm

domiciled in the city of New York, composed of John S. Williams and William H. Guion, of said city of New York, respectfully shews:

78 That petitioners are the lawful owners and holders for value and before maturity of three bonds of the State of Louisiana, issued by said State under act No. 95, of 1871, and described in the petition of the plaintiff in paragraphs Nos. 12 and 30 thereof, being Nos. 1351, 1352, and 1353 of said issue. Said bonds are dated April 24th, 1871, payable to bearer, due in the year 1910, each for $1,000, and with coupons as prescribed by law.

That your petitioners purchased said bonds in open market, on or about the 1st July, 1872, in good faith, paying 71 cents on the dollar, in full reliance on the contract and promises contained in and evidenced by said bonds; and without any notice or knowledge of any fact going to affect the validity thereof.

That petitioners have a legal interest in this suit to the amount of $3,000 and interest accrued, and the right to intervene herein; and as holders of said bonds to assert their validity in petitioners' hands.

That said bonds, from the time they were purchased by your petitioners, have constituted valid contracts between your petitioners and the State of Louisiana, which the said State has no right in any wise to impair; and your petitioners assert and claim herein the rights

79 guaranteed to them by the tenth section of the first article of the Constitution of the United States, forbidding the impairing by the said State of said contracts.

That petitioners are entitled in law and equity to have the injunction which has been issued herein dissolved as to their said bonds.

Wherefore petitioners pray that this petition may be filed, and the parties hereto notified according to law; that judgment may be rendered herein, dissolving the injunction herein as to the bonds of petitioners, and that such other and further judgment may be rendered as may be just and equitable in view of the facts of the case.

(Signed) KENNARD, HOWE & PRENTISS,
Attys. of Intervenors.

Order.

Let this petition of intervention be filed.
New Orleans, November 2nd, 1874.
(Signed) JACOB HAWKINS, *Judge.*

Citation for the State.

State of Louisiana, superior district court for the parish of Orleans,

80 in the city of New Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR OF PUBLIC ACCOUNTS. } No. 369.

To the State of Louisiana, through A. P. Field, attorney-general:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of said court, this 5th day of November, in the year of our Lord 1874.

[SEAL.] (Signed) J. J. HANNON,
Deputy Clerk.

Sheriff's return.—Filed 6th November, 1874.

Received November 5th, 1874, and on the 6th day of same month & year served a copy of the within citation and accompanying petition of intervention on the State of Louisiana, through A. P. Field, attorney-general, in person.

Returned same day. Sh'ff's fees, $2.00.

(Signed) HENRY BENIT, *D'y Sh'ff.*

81 *Citation for C. Clinton, auditor.*

State of Louisiana, superior district court for the parish of Orleans, in the city of New Orleans.

STATE OF LOUISIANA
versus
CHARLES CLINTON, AUDITOR OF PUBLIC ACCOUNTS. } No. 369.

To Charles Clinton, auditor of public accounts, New Orleans, Louisiana:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans within ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, this 5th day of November, in the year of our Lord 1874.

[SEAL.] (Signed) J. J. HANNON,
Deputy Clerk.

Sheriff's return.—Filed 6th November, 1874.

Received November 5th, 1874, and on the 6th day of the same
82 month & year served a copy of the within citation & accompanying petition of intervention on Charles Clinton, auditor of public accounts, in person.

Returned same day. Sh'ff's fees, $2.00.

(Signed) HENRY BENIT, *Dy. Sh'ff.*

Default against the State & auditor.—Minutes 17th November, 1874.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR. } No. 369.

On motion of Kennard, Howe & Prentiss, and on suggesting that there has been as yet no answer or return filed to the intervention of Williams & Guion herein, and also that the legal delay has elapsed:

It is ordered, that judgment by default be accordingly entered against the State of Louis'a and Charles Clinton, auditor of public accounts, parties hereto.

Motion by intervenors for commission.—Filed 17th November, 1874.

STATE vs. CLINTON. } No. 369. On intervention of Williams & Guion.

On motion of W. W. Howe, of counsel for intervenors, Wil-
83 liams & Guion, and suggesting that John S. Williams and Wm. H. Guion, of New York, are material witnesses on intervention in this case, and a commission is necessary to take their testimony:

Ordered, that a commission issue herein to any Louisiana commissioner in New York to take their testimony.

Affidavit annexed to motion.

William W. Howe, being duly sworn, says that a commission is necessary herein as stated in this motion.

(Signed) W. W. HOWE.

Sworn before me, New Orleans, Nov. 17th, 1874.

(Signed) P. E. BURKE, *Dy. Clerk.*

Notice to cross-interrogatories.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA vs. CHARLES CLINTON, &C. } No. 369. Intervention of Williams & Guion.

To the State of Louisiana, through Jno. B. Cotton:

SIR: Please to take notice of the interrogatories herein filed,
84 and cross the same within three days it you see fit; otherwise a commission will issue, without such cross-interrogatories, in the above-entitled case.

[SEAL.] (Signed) J. J. HANNON, *Deputy Clerk.*

Sheriff's return.—Filed 21st November, 1874.

Received November 18th, 1874, and on the 20th day of same month & year served a copy of within notice to cross & accompanying interrogatories on the State of Louisiana, plaintiff herein, by personal service on J. B. Cotton, esq., atty. for the State of Louisiana.

Returned same day.

Sh'ff's fees, $1.50.

(Signed) HENRY BENIT, *Dy. Shff.*

Order setting default aside.—Minutes 18th November, 1874.

STATE OF LOUISIANA vs. CHAS. CLINTON, AUDITOR, ET ALS., N. O., Mobile & Texas R. R. Co., and Williams & Guion, intervenors. } No. 369.

On motion of A. P. Field, attorney-general, J. Q. A. Fellows, and J. B. Cotton, of counsel—

It is ordered that the default herein entered November 17th, 1874, be set aside and the answer filed.

Answer of the State to intervention of Williams & Guion.—Filed 18 *November*, 1874.

Superior district court.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, ET ALS., MOBILE and Texas R. R. Co., intervenors, and Williams & Guion, intervenors. } No. 369.

Now into court comes the State of Louisiana, through the undersigned counsel, and for answer of Williams & Guion, claiming three bonds, of $1,000 each, of the issue involved in this litigation, denies all and singular the facts and allegations in the petition of intervention contained, and specially does this respondent deny that the parties acquired said bonds as innocent third parties in good faith and for a valuable consideration, without notice, for no person who deals in State securities can plead ignorance of the State laws and the condition of public works done under and by virtue of the provisions of such laws in the purchase of obligations of the State, based on the faithful compliance of the conditions thereof. That no consideration was ever given the State for said bonds to the full knowledge of the holders.

86 Respondent adopts all the allegations in the answer made to the intervention filed heretofore by the New Orleans, Mobile & Texas Railroad Company as an answer to the intervention herein filed.

Wherefore your respondent prays, after due proceedings had, that there be judgment in favor of the State of Louisiana and against the intervenors Williams & Guion, decreeing said bonds to be illegal, null, and void, and they be ordered to be returned to the State, and for costs, and for all & general relief, &c.

(Signed) A. P. FIELD, *Att'y Gen'l.*
(") J. Q. A. FELLOWS & J. B. COTTON,
Of Counsel.

Motion by plff. for a commission.—Filed 30*th November*, 1874.

Superior district court.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, & ANT. DUBUCLET, treasurer; the N. O., Mobile & Texas R. R. Co. and Williams & Guion, intervenors. } No. 369.

On motion A. P. Field, att'y gen'l, H. C. Dibble, ass't att'y gen'l, and Fellows and Cotton, of counsel, on suggesting to the court that A. D. Rondeau, Charles Rondeau, Simon Rondeau, Ozine Rondeau, Dr. G. W. Schranton, Thomas Hopkins, and H. A. Kennedy are material and

87 necessary witnesses in behalf of the State, and they are all residing in the town of Vermillionville, in the parish of La Fayette, in this State, and their testimony should be taken under a commission: It is ordered that a commission do issue to A. Monier, clerk of the dis-

trict court for said parish, to take the testimony of said witnesses, and that twenty days be allowed for the return of said commission.

Motion of plaintiff for commission.—Filed & entered 1st December, 1874.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE Dubuclet, treasurer; the New Orleans, Mobile & Texas Railroad Company, & Williams & Guion, intervenors. } No. 369.

On motion of A. P. Field, att'y general, and H. C. Dibble, ass't att'y gen'l, and Fellows & Cotton, of counsel, on suggesting to the court that M. E. Girard, esq., is now in this city, and they are informed that
88 this evening Judge A. I. Morse and Dr. F. S. Mudd and other parties will arrive here, and that all of said parties are residents of Vermillionville, in the parish of La Fayette, in this State, and they will depart in three or four days, and that their testimony is necessary in behalf of the State in this litigation—

The affidavit considered, it is ordered that a commission do issue, directed to the clerk of this court, to take the testimony of said witnesses as the law directs.

Affidavit annexed.

John B. Cotton, being sworn, says that he is one of the counsel in this case, that the facts and allegations in the foregoing motion are true and correct.

(Signed) J. B. COTTON.

Sworn to and subscribed before me this 1st Dec'ber, 1874.

(Signed) JOHN BURKE, *Clk.*

Notice to take testimony.

State of Louisiana, superior district court for the parish of Orleans, New Orleans, Tuesday, Dec. 1, 1874.

STATE OF LOUISIANA
vs.
CLINTON & DUBUCLET. } No. 369.

To W. W. Howe & Jno. A. Campbell, att'ys at law:

89 SIRS: Please to take notice that the testimony in the above-entitled case is fixed for trial on Wednesday, the 2nd day of December, 1874, at 10 o'clock a. m.

[SEAL.] (Signed) P. E. BURKE, *Deputy Clerk.*

Sheriff's return.

Rec'd December 1st, 1874, and on the 2nd day of same month, & year

I served a copy of within notice of trial on John A. Campbell and W. W. Howe, esq'res, atty's at law, both in person.
Ret'd same day.
Shff.'s fees, $1.00.
(Signed) S. E. CROZAT,
Dy. Sheriff.

Notice to take testimony.

State of Louisiana, superior district court for the parish of Orleans, New Orleans, December 7th, 1874.

STATE OF LOUISIANA
vs.
CLINTON ET ALS. } No. 369.

To W. W. Howe and Jno. A. Campbell, esqrs.:
SIRS: Please to take notice that the testimony of Mr. Gerard in the above-entitled case will be taken Tuesday, the 8th day of December, 1874, at 11 o'clock a. m.
90 [SEAL.] (Signed) P. E. BURKE,
Dy. Clk.

Sheriff's return.—Filed Decr. 8, '74.

Received Decr. 7th, 1874, and on the same day, month, & year served the within notice of trial on W. W. Howe, atty., in person.
Returned same day.
Shff.'s fees, $1.00.
(Signed) S. E. CROZAT,
Dy. Sheriff.

Order & continuance.—Minutes 9th December, 1874.

STATE OF LOUISIANA
vs.
CHARLES CLINTON. } No. 369.

This case, assigned for this day, was ordered to be continued by preference.

Rule by pltff. to read depositions.—Filed & entered 9th Dec'er, 1874.

STATE OF LOUISIANA
vs.
C. CLINTON ET ALS. } No. 369.

Superior dist. court for the parish of Orleans.

On motion of att'y general, Fellows & Cotton, of counsel for the State, and on suggesting that the commission directed to the parish of La Fayette, in this State, has been returned:
91 It is ordered that defendants & intervenors do show cause on the 11th of December, 1874, at 11 a. m., why the said commission should not be received, and the answers to interrogatories should not be received and read in evidence on the trial of this cause.
Service accepted & delays waived.
(Signed) HOWE.

Rule by intervenors to read depos'ons.—Filed & entered Dec'er 9th, 1874.

Superior dist. court.

STATE OF LA. *vs.* CLINTON, &C., WILLIAMS & GUION, INT'S. } No. 369.

On motion of Kennard, Howe & Prentiss, attorneys for intervenors, ordered that the plaintiff show cause on Friday, December 11th, 1874, at 11 a. m., why the commission herein should not be read in evidence for intervenors.

Service admitted & delay waived. FELLOWS & COTTON, *Attys.*
(Signed)

Order.—Rule to read depositions absolute.—Minutes 11th December, 1874.

STATE OF LOUISIANA *vs.* CHARLES CLINTON. } No. 369.

92 The rule herein assigned for this day for trial came on. Kennard, Howe & Prentiss for plaintiffs in rule.

J. B. Cotton for defendant in rule.

After hearing counsel, the court, considering the law & evidence to be in favor of plffs. in rule,

It is ordered that said rule be made absolute, and accordingly that the evidence taken under commission be read in evidence, reserving to the intervenors the right to object to the testimony on all the grounds, including the objection that the cross-interrogatories is not properly answered.

Order.—Rule to read depositions absolute.—Minutes December 11th, 1874.

STATE OF LOUISIANA *vs.* CHARLES CLINTON, &C. } No. 369.

The rule herein assigned for trial for this day came on, J. B. Cotton, for plaintiff in rule. Kennard, Howe & Prentiss for defendants in rule.

After hearing counsel, the court, considering the law and evidence to be in favor of plaintiff in rule,

It is ordered that said rule be made absolute, and accordingly that the evidence taken under commission be read in evidence, reserving to the plaintiff the right to object to the testimony on all the

93 grounds, including the objection that the cross-interrogatories is not properly answered.

Motion of intervenors for commission.—Filed & entered 11th December, 1874.

Superior dist. court for the parish of Orleans.

STATE OF LOUISIANA *vs.* CHARLES CLINTON, &C., N. O., M. & TEXAS R. R. Co., and Williams & Guion, intrs. } No. 369.

On motion of W. W. Howe, of counsel for intervenors, ordered that

a commission issue on behalf of said intervenors to any Louisiana commissioner in New York, to take testimony of James A. Raynor and W. S. Williams, and John J. Howell, witnesses for said intervenors.

Affidt. waived; all rights reserved.

(Signed) COTTON, *Atty.*

Order & continuance.—Minutes 23rd December, 1874.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR. } No. 369.

This case, assigned for this day for trial on the interventions herein filed, came on.

94 J. Q. A. Fellows & J. B. Cotton representing the State; Kennard, Howe & Prentiss and John A. Campbell for intervenors.

After hearing counsel, the same was ordered to be continued by preference.

(Bill of exception, see page 41.)

Order & continuance.—Minutes January 6th, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON ET ALS. } No. 369.

This case, fixed for this day, was ordered to be continued to the 9th instant.

Motion & affidavit for subpœna d. tecum.—Filed 7th January, 1875.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, &C. } No. 369.

On motion of W. W. Howe, of counsel for intervenors, Williams & Guion, and the R. R. Co.:

Ordered that subpœna duces tecum issue for the 9th inst. to A. Dubuclet, state treasurer, and P. G. Deslonde, secretary of state, to bring papers mentioned in the annexed affidavit herewith filed.

95 *Affidavit.*

W. W. Howe, of counsel, being sworn, says that, as he is informed & believes, it is necessary for intervenors to have on trial of this case the following documents, in posession of officers of plaintiff:

1. Certificate of stock of R. R. Co., issued to State under act No. 95, of 1871, in possession of State treasurer.

2. The following papers in possession of secretary of states: (1) agreement of R. R. Co. to begin work, under act of 1871, No. 95; and (2) certificate that work has been begun. Oct'er, 1871.

(Signed) W. W. HOWE.

Sworn before me January 7th, 1875.

(Signed) J. J. HANNAN, *Dy. Clerk.*

Bill of exceptions of the New Orleans, Mobile & Texas Railroad Company, intervenor.—Filed 24th December, 1874.

Superior district court.

(This should be at page 39.)

STATE OF LOUISIANA
vs.
CLINTON, N. O., MOBILE & TEXAS R. R. Co., intervenors. } No. 369.

96 Be it remembered, that on the 23rd day of December, 1874, in open court, and in presence of counsel for plaintiff, the intervenor, the N. O., Mobile and Texas Railroad Company, offered the annexed motion marked "A," and asked leave to discontinue its intervention on payment of costs, on the grounds—

(1.) That its intervention did not claim that the railroad company was, at the time it intervened, owner of any of the bonds issued under act No. 95, of 1871.

(2.) That said intervenor at the time of this motion was not the owner of any of said bonds.

(3.) That said intervenor disclaimed any interest in this litigation, and claimed to be allowed to discontinue its demand.

But the court refused the said motion, on the ground that when a party has intervened he cannot prejudice the litigation by withdrawing his demand.

To which ruling counsel for intervenor then and there excepted and tendered this its bill of exceptions.

(Signed) JACOB HAWKINS, *Judge.*

Exhibit A, annexed.

STATE
vs.
CLINTON, N. O., M. & T. R. R. Co., INTERVENORS. } No. 339. A.

97 On motion of John A. Campbell and W. W. Howe, of counsel for intervenor, the railroad co., and on suggesting that the said intervenors hold none of the bonds mentioned in the intervention and now disclaim any interest therein:

It is ordered that said intervention be discontinued at the costs of the intervenors. A.

Subpœna duces tecum for treasurer.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CLINTON & DUBUCLET. } No. 369.

To Antoine Dubuclet, State treasurer:

You are hereby commanded, in the name of the superior district court for the parish of Orleans, to bring with you and produce in open court, on Saturday, the 9th day of January, 1875, at the hour of 11 a. m., to be used in evidence at the trial of the above-entitled case, by the

plaintiff therein, the certificates issued to the Vermillionville Branch of the Chattanooga R. R., and herein you are not to fail under penalty of the law.

Witness the Hon. Jacob Hawkins, judge of the said court, this 7th day of January, 1875.

[SEAL.] (Signed) J. J. HANNAN,
Deputy Clerk.

98 *Sheriff's return.*

Rec'd Jan'y 7th, 1875, and on the 9th day of same month & year I served a copy of within subpœna duces tecum on Antoine Dubuclet, State treasurer, in person.

Ret'd same day.

Sh'ff's fees 50 cts.

(Signed) EUGENE MESTIER,
Dy. Sh'ff.

Subpœna duces tecum for State treasurer.

Sate of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, & ANTOINE DUBUCLET, treasurer. } No. 369.

To Antoine Dubuclet, State treasurer:

You are hereby commanded, in the name of the superior district court for the parish of Orleans, to bring with you, and produce in open court, on Saturday, the 9th day of January, 1875, at the hour of 11 a. m., to be used in evidence at the trial of the above-entitled case by the intervenor therein, the certificates of stock received by the State, under act No. 95, of 1871.

And herein you are not to fail under penalty of the law.

Witness the Hon. Jacob Hawkins, judge of the said court, this 7th day of January, 1875.

[SEAL.] (Signed) J. J. HANNAN,
Deputy Clerk.

99 *Sheriff's return.*

Received January 7th, 1875, and on the 7th day of same month & year I served a copy of within subpœna duces tecum on Antoine Dubuclet, State treasurer, in person.

Returned same day. Sh'ff's fees 50 cts.

(Signed) EUGENE MESTIER,
Dy. Sheriff.

Subpœna duces tecum for sec'y of state.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHAS. CLINTON AND ANT. DUBUCLET. } No. 369.

To P. G. Deslonde, secr't'y of state:

You are hereby commanded, in the name of the superior district court

for the parish of Orleans, to bring with you, and produce in open court on Saturday, the 9th day of January, 1875, at the hour of 11 a. m., to be used in evidence at the trial of the above-entitled case by the intervenor therein—

1st. Agreement of R. R. Co. under act of 1871, No. 95, to begin road.
2nd. Certificates of commencement of work, filed October —, 1871.

And herein you are not to fail under penalty of the law.

100 Witness the Hon. Jacob Hawkins, judge of the said court, this 7th day of January, 1875.

[SEAL.] (Signed) J. J. HANNAN,
Deputy Clerk.

Sheriff's return.

Received January 7th, 1875, and on the same day, month, and year I served a copy of the within subpœna duces tecum on P. G. Deslonde, secretary of state, personally.

Returned same day. Sh'ff's fees 50 cts.

(Signed) EUGENE MESTIER,
Dep'y Sheriff.

Return to commission for pl'ff.—Filed in evidence 9th Jan'y, 1875.—Opened & filed 9th Dec'er, 1874.

COMMISSION.

Superior district court for the parish of Orleans. No. 369.

State of Louisiana to A. Monier, clerk of the district court for the parish of La Fayette, greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the superior district court

101 for the parish of Orleans, wherein the State of Louisiana is plaintiff and Charles Clinton, auditor, and Antoine Dubuclet, treasurer, are defendants, the New Orleans, Mobile & Texas Railroad Company et als. intervenors.

Witnesses: A. D. Rondeau, Charles Rondeau, Simon Rondeau, Ozine Rondeau, Dr. G. W. Schranton, Thomas Hopkins, and H. A. Kennedy, Vermillionville, parish of La Fayette, La.

Therefore, we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy Evangelists; that you reduce their examination to writing, and cause the witnesses to sign the same; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our superior district court, in the city of New Orleans, without delay.

Witness the honorable Jacob Hawkins, judge of our said court, the first day of December, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] (Signed) P. E. BURKE, *Dy. Clerk.*

102 *Interrogatories.*

Superior district court.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, AND ANT. DUBUCLET, treasurer, the New Orleans, Mobile & Texas R. R. Co., and Williams & Guion, intervenors. } No. 369.

Interrogatories propounded to A. D. Rondeau, Charles Rondeau, Simon Rondeau, Ozine Rondeau, Dr. G. W. Schranton, Thomas Hopkins, and H. A. Kennedy, competent and material witnesses in behalf of the State of Louisiana, residing in and near Vermillionville, in the parish of La Fayette, State of Louisiana.

1st. What is your age, occupation, and profession; and have you any interest, direct or indirect, in the result of this suit?

2nd. How long have you resided in the parish of La Fayette or town of Vermillionville?

3rd. Do you know or have you ever heard of a railroad being constructed from the town of Vermillionville, in the parish of La Fayette, to the city of Shreveport, in the parish of Caddo, in this State, by the railroad corporation known as the New Orleans, Mobile and Texas Railroad Company, claiming to have a domicile in the city of New Orleans? If yea, will you state when the company commenced to construct
103 said road, and to what extent did said company build the said branch road; and where did they commence the work; and will you state the number of hands said company employed to build the said branch road; name the parties who were superintending the work; how long did the hands labor on the work? And you are requested to be particular in detailing the full extent of the work done, the character and value of the work done, on said branch road.

4th. This branch road was to be commenced within six months from the 21st April, 1870, as required by act No. 95 of the session of the legislature of , page . Will you examine said act, and then go and examine the spot where it is said an attempt or feint was made by the company, and say whether the work done was really a bona-fide commencement or whether it was a feint or pretext?

5th. You will state whether there exists at this time any traces of the work done by the company; and, if so, be particular and detail it.

6th. State when and where was the last work done on this branch road.

7th. This litigation is to have annulled two and a half millions
104 dollars of bonds, drawing eight per cent. per annum interest, issued by Warmoth, under the provisions of the act above referred to, on the grounds, among others, that the New Orleans, Mobile and Texas Railroad Company had not commenced in good faith to construct said branch road from Vermillionville to Shreveport within the time prescribed. You are requested to state any fact within your knowledge relating to this matter as if specially interrogated in relation thereto.

Cross-interrogatories.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, &C. } No. 369.

Cross-interrogatories by intervenors.

Intervenors, reserving all legal objections, and especially the following, that all the interrogatories are irrelevant, and that they are, especially the 4th, 5th, 6th, and 7th, leading and improper, propound the following:

1st cross-interrogatory. If you have answered the 3rd direct interrogatory, state whether you were personally present when said work was commenced, and while it was carried on; how and why did you come to be present? If you have testified to the character and value of railroad-work done, please state particularly your means of judging. Are you a railroad engineer or railroad man?

105 2nd cross-interrogatory. If, in answer to the 4th direct interrogatory, you undertake to say that the beginning of the road, from Vermillionville to Shreveport, was not bona fide, and was a mere feint or pretext, please state your authority for such statement. Did you, at the time said work was done, know the directors of the said railroad company personally? Did they inform you of their intent or motives in the premises? Did you attend any meeting of said directors where the matter was discussed? Would you undertake to tell, by looking at the work that was done as you have described it, the intent or motives of the directors of the said railroad company in causing the work to be done? If yes, please inform the court, particularly and precisely, how it is that, by looking at the work that was done at Vermillionville in October, 1871, you could therefrom judge of the mental states, the moral condition, the intents and motives of distant and unknown railroad directors.

3rd cross-interrogatory. Referring to the 4th direct interrogatory, and in case you have undertaken to state under oath the motives, intents, and mental and moral condition of the directors of said railroad company in the premises, suppose you were told (which is the fact) that

106 after beginning the work, as it was begun in October, 1871, the said railroad company, instead of building a new embankment from Vermillionville to Opelousas, bought, at large expense, the old Opelousas Railroad, franchises, embankment, right of way, grading, &c., from Vermillionville to Shreveport, via Opelousas, would you still declare under oath that the said commencement of work in October, 1871, was a feint and a pretext? If yes, state why? Would it not have been just as well for the State, for the people, and for the said New Orleans, Mobile and Texas Railroad Company, if the old roadway from Vermillionville to Opelousas had thus been reconstructed and put in good order as if a new roadway had been built on the same line? If not, state why not, and give your reasons fully.

4th cross interrogatory. Referring to the 5th direct interrogatory, if you have answered the same, state if the embankment of the railroad from Vermillionville to Opelousas, built before the war, and bought in the fall of 1871 by the N. O., Mobile & Texas R. R. Co., intervenors herein, is not still existing?

5th cross-interrogatory. Please state the distance from Vermillionville to Opelousas, as nearly as you can.

6th cross-interrogatory. If, in answer to the seventh and last direct interrogatory, you undertake to say that the said railroad company, intervenors herein, have not, whether by building or by purchase of work already built, begun in good faith, in the fall of 1871, a railroad from Vermillionville to Opelousas and Shreveport, be pleased to give us fully the grounds of your deciding the company to have been in bad faith. Tell us fully how you are able to state under oath, as facts within your knowledge, the good or bad faith, the mental and moral status of the directors of the company, intervenors herein.

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(The officer before whom this commission is executed will please read the cross-interrogatories carefully to each witness, and let each witness understand that he is to speak from his own knowledge of facts, and that gossip and hearsay are not evidence.)

(Signed) KENNARD, HOWE & PRENTISS,
Attys. Intervenors.

Caption.

UNITED STATES OF AMERICA,
The State of Louisiana, parish of Lafayette:

Deposition of witnesses taken and subscribed before me, August Monnier, clerk of the 16th judicial district court in and for the parish of Lafayette, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the fifth day of December, anno Domini one thousand eight hundred and seventy-four, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of said day, at my office, in the town of Vermillionville, parish of Lafayette, and State of Louisiana, in pursuance of a commission hereto annexed, and to be read as evidence in a certain case now pending in the superior district court for the parish of Orleans, State of Louisiana, wherein the State of Louisiana is plaintiff, and Charles Clinton, auditor, and Antoine Dubuclet, treasurer, are defendants. The New Orleans, Mobile and Texas Railroad Company & al., intervenors, on the part of said plaintiff.

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Col'l A. D. Boudreaux, Simon Boudreaux, Ozeine Boudreaux, Dr. Geo. W. Scranton, Dr. Thomas B. Hopkins, Col'l Hyder A. Kennedy, (Charles Boudreaux, being sick and confined, not present,) witnesses known to me to be of lawful age and domiciliated in said parish of Lafayette, La., being to me at the time and place aforesaid produced, and being by me first duly sworn, according to law, to testify to the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on their oaths aforesaid, depose and say and answer as follows, to wit:

Dr. Geo. W. Scranton, being duly sworn, answers to—

109

1st interrogatory. I am twenty-five years old. My occupation and profession is physician. I have no other interest in this suit only so far as other citizens of the State are interested.

2nd interrogatory. I have resided all my life in the parish of Lafayette, being born and raised here.

3rd interrogatory. At the time the New Orleans, Mobile and Texas Railroad was worked on I was not in the parish of Lafayette, and don't know anything about it. I was then at college.

4th interrogatory. After having examined the act No. 95 of the general assembly, approved April 20th, 1871, and having been on the spot,

I found the following work done: A ditch two hundred and ninety-one feet long by six feet wide, one and a half foot deep; from what I have seen it was no embankment; the dirt was only thrown on the left-hand side going north. The embankment of the old road, that is, the New Orleans, Mobile & Texas Railroad, seems directly east and west.

The ditch referred to makes a curve towards the north.

5th interrogatory. I have answered this question in the above (4th) interrogatory.

6th interrogatory. I do not know.

110 7th interrogatory. I don't know whether they have commenced any branch road, and have no personal knowledge that they begun a branch road from Vermillionville to Shreveport.

Cross-interrogatories:

1st cross-interrogatory. I don't know nothing about that. I was not then present.

To 2nd cross-interrogatories. Not knowing the gentlemen's motives, I would not attempt to say anything concerning the road.

To 3rd cross-question. Not being acquainted with the gentlemen, I cannot answer as to their motives, intents, &c., of the directors of said road. I can only say that the old road (the New Orleans, Opelousas and Great Western Railroad) runs north and south.

The ditch referred to in my 4th answer is about a mile from said Opelousas Railroad, and curves north from the embankment of the New Orleans, Mobile & Texas Railroad.

To the 4th cross-question. The embankment of the old N. O., Opelousas & G. W. Railroad is still existing.

To 5th cross-question. I presume the distance is about twenty-five miles.

To 6th cross-interrogatory. I cannot say anything about this, as I don't know anything else but what I have stated already.

111 (Signed) G. W. SCRANTON, M. D.

Sworn to and subscribed before me this 5th day of December, A. D. 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

Col'l A. D. BOUDREAUX, duly sworn, answers to—

1st interrogatory. I am fifty-six years old. My occupation is farming. I have no interest in this suit.

2nd interrogatory. For over fifty years.

3rd interrogatory. I never heard and do not know of any railroad branch being constructed from the town of Vermillionville, parish of Lafayette, to the city of Shreveport, in the parish of Caddo.

4th interrogatory. I saw a ditching for a day or two, and the laborers stopped; it was about March, 1872, that is to say, between the months of October, 1871, and March, 1872, and in my opinion it was a feint.

5th interrogatory. There exists at this time a ditch only, but no sign of embankment.

6th interrogatory. I know but once. It was at the time the above ditch was done.

7th interrogatory. I don't know of any other facts relating to this matter.

Cross-interrogatories:

112 To 1st cross-interrogatory. I passed by sometimes and saw laborers working at the said ditch. I am no railroad man, and consequently not a judge of this work.

To 2nd cross-interrogatory. I formed my opinion in regard to the feint on the ground that since it was begun that work was not touched up to this time.

To 3rd cross-interrogatory. I cannot tell, because I did not know that they bought the other road, and I suppose it would have been better, for there was one already & all graded.

To 4th cross-interrogatory. The old embankment of the New Orleans, Opelousas & G. W. Railroad still exists.

To 5th cross-interrogatory. About twenty-five miles.

To 6th cross-interrogatory. This interrogatory I am unable to answer, because I did not follow the proceedings & doings of the directors of said railroad co.

(Signed) A. D. BOUDREAUX.

Sworn to & subscribed before me this 5th day of December, A. D. 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

OZÉMÉ BOUDREAUX, being duly sworn, answers to—

113 1st interrogatory. I am fifty-seven years old. I am a farmer. I am interested as other citizens of this State may be in this suit.

2nd interrogatory. All my life in this State, and about fifty years in the parish of Lafayette.

To 3rd interrogatory. I was told by some of the laborers (whom I don't know the names) who were working at a ditch in my father's field, (Olivier Boudreaux,) where I live, that they were doing this work to start a railroad going to Shreveport. As far as I can recollect, that work was begun in the fall of 1871, (a few months before the N. O., Mobile & Texas Railroad was begun.) The ditch is, as I have measured it this day, two hundred and ninety-one feet long, six feet wide, and about one and a half foot deep. The dirt is only thrown on one side as in ordinary ditching. I cannot tell the value of the work done, not being well acquainted with such work.

To 4th interrogatory. In my opinion this work was only a feint, and I am firmly held to believe that it was so, for the' only commenced it, never continued until to-day.

5th interrogatory. Yes; there exists, as I have said already & detailed the ditch in the 3rd interrogatory.

6th interrogatory. The work last done started from the road of
114 the N. O., Mobile & Texas railroad embankments, (which N. O., Mobile & Texas R'lr'd runs east and west,) and curves towards the north.

7th interrogatory. In my opinion, as it was a feint and a pretext, this work was not done in good faith, to continue the road from Vermillionville to Shreveport.

Cross-interrogatories:

To 1st cross-interrogatory. I was personally present when the said work was commenced, and saw the work going on until the laborers stopped. I was living on the place. I am no engineer, no railroad man, and I don't pretend to judge of the value of railroad work.

To 2nd cross-interrogatory. My ground for saying that the beginning of the branch from Vermillionville to Shreveport was not a bona-fide intention to carry it through, but only a feint and pretext, is that I only

saw the ditching begun & left until this day. At that time I did not know the directors of said company, nor their motives, intents, &c. I never attended any meetings of the directors of said road. I could not, not knowing any of them, undertake to tell their motives by the looks of the work done.

3rd cross-interrogatory. Yes; I would still declare, even if the N. O., Opelousas Railroad was bought for that purpose, that the work or
115 commencement of work done was a feint; but, in the mean time, I think it would have been beneficial to the State, to the people, and to the company itself, to have reconstructed the old New Orleans, Opelousas Railroad, for the grading was already done.

To 4th cross-interrogatory. Yes; it still exists.

To 5th cross-interrogatory. I don't know the distance. I never was there, and never personally ascertained the distance.

To 6th cross-interrogatory. It is because if they had been in good faith to construct the road they would not have abandoned it. This is my ground for stating so.

(Signed) OZÉMÉ BOUDREAUX.

Sworn to & subscribed before me this 5th day of December, 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

SIMON BOUDREAUX, sworn, says & answers to—

1st interrogatory. I am thirty-four years old. I am a planter. I have no direct or indirect interest in the result of this suit.

2nd interrogatory. I am residing in the parish of Lafayette for 33 years.

3rd interrogatory. I don't know of any railroad being constructed from the town of Vermillionville to Shreveport by the New Orleans, Mobile & Texas Railroad Company, but I saw a ditch which was
116 dug at the place where I was told that a branch road from this place to Shreveport was to be constructed. The ditch is about two hundred & ninety-one feet long; don't know the value of the work of railroad labor's, but for a farmer it would be worth about twelve dollars.

To 4th interrogatory. In my opinion, by the looks of the work, it is only a feint.

To 5th interrogatory. I have already answered to this effect in the 3rd interrogatory.

To 6th interrogatory. The last work done or ditch dug was performed about the fall of 1871.

To 7th interrogatory. I verily believe that the road had not been commenced in good faith by the New Orleans, Mobile and Texas Railroad Company from Vermillionville to Shreveport, because there is but one ditch, and then it was not continued.

Cross-questions:

To 1st cross-interrogatory. I was not present, and saw the work but this day on going to examine it. I am not acquainted with railroad work.

To 2nd cross-interrogatory. I have already stated my grounds in the 4th and 7th interrogatories.

To 3rd cross-interrogatory. I would still declare that the be-
117 ginning of this work or ditch was a feint or pretext. I am of the opinion that the old New Orleans, Opelousas & Great Western

Railroad would have as well answered the purpose—even better; for it was already graded.

To 4th cross-interrogatory. The N. O. Opelousas embankment still exist'.

To 5th cross-interrogatory. About twenty-five miles.

To 7th cross-interrogatory. It is because the company did not continue the work begun.

(Signed) SIMON A. BOUDREAUX.

Sworn to & subscribed before me this 5th day of December, 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

Doct'r THOMAS B. HOPKINS, sworn, answers—

To 1st interrogatory. I am forty-two years of age. My profession is physician. I have no interest more than any other citizen of this State.

2nd interrogatory. I am a resident of the parish of Lafayette since eight years.

3rd interrogatory. I do not know of a branch railroad being constructed from the town of Vermillionville to the city of Shreveport, but I saw laborers working in Boudreaux's field. I cannot say what they were working for. I only heard that they had begun to work on
118 the road; that is, cutting a ditch; said ditch, being measured by me, is two hundred and ninety-one feet long, six feet wide, and one and a half foot deep. If I had not been told it was for a railroad I would not infer that it was railroad work, for it is only a ditch—the dirt thrown on one side, as an ordinary ditch.

4th interrogatory. I cannot say whether it was a bona fide commencement or not. I am not acquainted well enough with railroad work to say that it was or not a bona-fide work.

5th interrogatory. The ditch spoken of still exists.

6th interrogatory. I do not know of any other work done on that branch, but the one (ditch) alluded to in 3rd interrogatory,

7th interrogatory. I have no other facts to state but those I have already stated.

Cross-interrogatories:

To 1st cross-interrogatory. I was not present at the commencement nor during the time the work was going on. I was passing on the Texas road when I saw the laborers cutting the ditch. I was about three hundred yards from them.

To 2nd cross-interrogatory. Answer in the 4th direct interrogatory.

To 3rd cross-interrogatory. I can see no good reason why the
119 old Opelousas Railroad could not have answered the same purpose as if a new road had been constructed, the old Opelousas Railroad being already graded.

To 4th cross-interrogatory. Yes; it is still existing.

To 5th cross-interrogatory. About twenty-five miles.

To 6th cross-interrogatory. Answered in the 4th int'y.

(Signed) THOS. B. HOPKINS.

Sworn to & subscribed before me this 5th December, 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

HYDER A. KENNEDY, sworn, answers to—

1st interrogatory. My age is thirty-four. My occupation is planter.

I have no interest in this suit but what other citizens of the State has.

2nd interrogatory. I am a resident of the parish of Lafayette since about six years.

3rd interrogatory. Some time during the fall (last of October) of 1870 to the spring of 1871 I heard there was a commencement of a railroad in Boudreaux's field. There was about five or six hands engaged on the work. They worked about four or five days, or perhaps a week. I think they were under the superintendence of Mr. Kleinpeter. The extent of the work is a ditch about two hundred and ninety-one
120 feet long, six feet wide, and one foot & a half deep.

To 4th interrogatory. I have no sufficient knowledge of railroad work to say whether it was a feint or a bona-fide commencement of a railroad.

To 5th interrogatory. The ditch referred to in 3rd interrogatory is still existing.

To 6th interrogatory. The ditch referred to is the only work I know.

To 7th interrogatory. I have no further facts to state according to my knowledge.

Cross-interrogatories:

To 1st cross-interrogatory. I was not personally present. I only heard about the commencement of the work, and visited the place to see the work only this day.

2d cross-interrogatory. This interrogatory I have answered in the 4th direct interrogatory.

3rd cross interrogatory. I think that the old N. O., Opelousas & G. W. Railroad would have answered just as well.

To 4th cross-interrogatory. It is still existing.

To 5th cross-interrogatory. About twenty-five miles from Vermillionville to Opelousas.

To 6th cross-interrogatory. To be referred to answer to the 7th direct interrogatory.

(Signed) H. A. KENNEDY.

Sworn to & subscribed before me this 5th day of December, 1874.

(Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

121 STATE OF LOUISIANA,
Parish of Lafayette:

I, Augustus Monnier, clerk of the 16th judicial district court, in and for the parish of Lafayette, duly elected, sworn, commissioned, and acting as such in and for said State and parish, do hereby certify and make known that the foregoing depositions of Dr. Geo. W. Scranton, Col. A. D. Boudreaux, Ozémé Boudreaux, Simon Boudreaux, Dr. Thomas B. Hopkins, and Hyder A. Kennedy, were taken before me on the 5th day of December, A. D. eighteen hundred and seventy-four, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing by me, clerk aforesaid, and by the said deponents respectively sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof I, Augustus Monnier, clerk of the 16th judicial dist. court in & for the parish of Lafayette, State of Louisiana, do hereunto set my hand and affix the seal of my office, at my office in Vermillionville, La., this 5th day of December, A. D. one thousand eight hundred and seventy-four.

[SEAL.] (Signed) A. MONNIER,
Clerk 16th Jud'l Dist. Court.

122 Commissioner's fees, $10.00; certificate, 1.00; sheriff's fees, 4.90; witnesses' fees & mil'ge, 9.00; postage paid, .24—$25.14; 6 subpœnas & original, 1.05—$26.19.

G.

Return to commission.—Filed (for intervenor) January 9th, 1875.

COMMISSION.

Superior district court for the parish of Orleans. No. 369.

State of Louisiana to any Louisiana commissioner in New York, greeting:

Know ye, that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the superior district court for the parish of Orleans, wherein the State of Louisiana is plaintiff and Charles Clinton, auditor, and Ant. Dubuclet, treasurer, are defendants; the New Orleans, Mobile & Texas Railroad Company and Williams & Guion are intervenors.

123 Witnesses: James A. Raynor, W. S. Williams, and John J. Howell, witnesses for intervenor.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart, upon their respective corporal oaths, first taken before you upon the Holy Evangelists; that you reduce their examination to writing, and cause the witnesses to sign the same; and when you shall so have taken them, that you send the same with this commission, closed up under your seal, to us in our superior district court, in the city of New Orleans, without delay.

Witness the honorable Jacob Hawkins, judge of our said court, this 16th day of December, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] (Signed) P. E. BURKE,
Dy. Clerk.

Interrogatories.

Superior district court.

THE STATE, &C.,
vs.
CHARLES CLINTON, N. O., M. & T. R. R. Co., intervenors, and Williams & Guion, intervenors. } No. 369.

Interrogatories to be propounded to James A. Raynor and William S. Williams, of New York, witnesses for intervenors:

241 First. State your residence and occupation.

Second. What official connection had you with the New Orleans, Mobile & Texas Railroad Co., in the year 1871.

Third. The issue in this case being the validity of certain bonds issued under act 95 of La. legislature, session of 1871, and it being contended that the N. O., M. & T. R. R. Co. did not begin the work within 6 mos. from time act was passed, state what you know of this matter and refer to such documents as may be proper to prove or corroborate the facts.

Fourth. If you have testified to the work being begun, state how it was then carried on between Vermillion and Opelousas. If by purchase of track already graded, state from whom, about when, and refer to the documents which show the purchase.

Fifth. State, as a railroad man, whether or not the carrying on of the work from Vermillion to Opelousas, towards Shreveport, by purchase of track already graded, was or was not as advantageous or more so, for all parties as is the track begun in October, 1871, at Vermillion had been carried on independently to Opelousas on the way to Shreveport.

Sixth. The plaintiff's attorneys having declared that they will
125 offer a letter of President Raynor of which a copy is hereto annexed, if the court should admit it, we would like you to explain its connection with the facts hereinbefore stated.

Seventh. If you know any other matter or thing of benefit to intervenors, please state the same.

(Signed) KENNARD, HOWE & PRENTISS,
Attys. for Intervenors.

Waiver of plff. to cross-int'ies.

Reserving all legal exceptions & especially excepting to the interrogatory fifth as leading, plaintiff waives cross-interrogatories.

Dec. 15th, 1874.

(Signed) J. Q. A. FELLOWS,
For the Plaintiff.

Deposition of W. S. Williams.

STATE OF NEW YORK,
City & County of New York:

Be it remembered that on the day of the date hereof, at the office of Simon Sterne, No. 59 Wall street, in the city of New York, I, Edwin F. Corey, junior, a commissioner for the State of Louisiana, in and for the State first above written, duly commissioned and sworn, and empowered to administer oaths and take depositions, acting under and by virtue of the enclosed and annexed commission, issued out of the superior district court for the parish of Orleans, State of Louisiana, in the case
126 entitled The State of Louisiana, plaintiff, and Chas. Clinton, auditor, and Ant. Dubuclet, treasurer, defendants, and the New Orleans, Mobile & Texas Railroad Company and Williams & Guion intervenors, being No. 369 of the docket of said court, have this day caused W. S. Williams, one of the witnesses named in the interrogatories, to come before me, and after having duly sworn him to answer truly to said interrogatories, he answered as follows:

The said W. S. Williams answered to the first interrogatory: My residence is New York City; occupation none.

To the second interrogatory he answers: I was a director up to the autumn of 1871.

To the third interrogatory he answers: Instructions were given to the engineer in charge to do what was necessary to conform to the require-

ments of the statutes to protect the rights of the company under the statute. In the secretary of state's office of Louisiana was filed the certificate of the engineer or agent to the effect that the work necessary to conform to the statute was done. This statement is made based upon a certificate sent to the office of the company here, purporting to be the original, or a true copy of the original, filed with the secretary of state of Louisiana.

To the fourth interrogatory he answers: Subsequent to this
127 there was purchased by the company (as I am informed and believe) a track already graded from Vermillion to or near Opelousas, a distance of about twenty miles, more or less. The purchase was made from Charles Morgan, late in the autumn of 1871, or early winter of 1872. The deed from Charles Morgan to the company is the evidence of that purchase.

To the fifth interrogatory he answers: The utilizing of this grade purchased from Charles Morgan would undoubtedly prove more advantageous and facilitate the prosecution of the work than to have made an independent grade, and regarded more in the interest of all parties, than to have built an independent grade, inasmuch as the existence of a line already graded parallel to one which the company might have made would have been an incentive to the construction of a competing line prejudicial to both the interests of the New Orleans, Mobile and Texas Railroad Company and also the State, a large stockholder therein.

To the sixth interrogatory he answers: The restrictions in said letter placed upon the amount of work to be done by the engineer were so placed in consequence of the company not having established the location of its branch line from Vermillionville to Shreveport at that time, and not wishing to incur unnecessary expense until such
128 location was absolutely and positively established. But it was intended and supposed that all was done necessary to preserve the rights of the company until such location should be established. If there was any failure in the compliance on the part of the company to the statute, it was the fault of the individual agent to whom was confided the performance of what was necessary to protect the rights of the company under the statute, and not any intention of the company by its officers to evade its requirements.

To the seventh interrogatory he answers: The procuring of the legislation and the issuing of the bonds in behalf of the company was entirely in good faith on the part of the officers thereof, with the full intent at that time of building and completing both its main line and its branch line herein alluded to, which undoubtedly would have been carried to successful completion, save for the destruction of the credit of the bonds so issued by the State and the bonds of the company by local interests and rival interests antagonistic to the success of the enterprise. In the event of the completion of the road, the capital stock given by the company to the State, in exchange for this issue of bonds on the part of the State, covering not only its branch line alluded to herein,
129 but nearly two hundred miles of its main line then constructed, gave to the State a consideration regarded as of great value at that time. In addition to this consideration in the form of capital stock, the company relinquished the obligation of the State under a statute of 1870, whereby the State assumed to guarantee about three millions of dollars of the second-mortgage bonds of the company.

(Signed) W. S. WILLIAMS.

And I further certify that the answers were reduced to writing by me, and that said witness signed the said answers in my presence.

In witness whereof I have hereunto subscribed my name and affixed my official seal this thirtieth day of December, A. D. 1874.

[SEAL.] (Signed) EDWIN F. COREY, JUNR.,
Commissioner for the State of Louisiana in New York.

H.—*Return to commission—Filed (for intervenors) 9th January*, 1875.

COMMISSION.

Superior district court for the parish of Orleans. No. 369.

State of Louisiana to any Louisiana commissioner in the State of New York, greeting:

Know ye that we, reposing confidence in your prudence and
130 fidelity, do by these presents give unto you authority diligently to examine all witnesses what'ver, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the superior district court for the parish of Orleans, wherein The State of Louisiana is plaintiff, and Charles Clinton, auditor of public accounts, is defendant, and John S. Williams & W. A. Guion are intervenors.

Witnesses, John S. Williams and W. A. Guion.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart, upon their respective corporal oaths, first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and cause the witnesses to sign the same; and when you shall so have taken them, that you send the same with this commission, closed up under your seal, to us, in our superior district court in the city of New Orleans, without delay.

Witness the honorable Jacob Hawkins, judge of our said court, this 21st day of November, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] (Signed) JNO. J. HANNON,
Deputy Clerk.

131 *Interrogatories.*

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, &C., INTERVENTION OF Williams & Guion. } No. 369.

Interrogatories to John S. Williams and Wm. H. Guion, witnesses for said intervenors.

First. Please state your name, age, business, and residence.

Second. Who compose the intervenors' firm?

Third. This being an intervention by the firm of Williams & Guion as holders of three bonds described in the petition of intervention issued to N. O., Mobile & Texas R. R. Co., under act of general assembly of Louisiana, No. 95 of 1871, being bonds Nos. 1351, 1352, and 1353,

please state the date when your firm bought said bonds, the place, the amount paid, and generally the facts connected with the purchase.

Fourth. State whether or not the intervenors were advised of, or had any reason to know, any facts to invalidate in anywise the said bonds.

Fifth. State any other facts of advantage to intervenors, as if specially interrogated.

(Signed) KENNARD, HOWE & PRENTISS,
Attys. for Intervenors.

132 *Cross-interrogatories.*

Superior district court.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, AUDITOR, &C., INTERVENTION of Williams & Guion. } No. 369.

Cross-interrogatories to John S. Williams and W. A. Guion, witnesses for said intervenors.

The 4th interrogatory objected to as leading; and reserving all legal objection, both as to matter and form, and especially as to the right of intervening herein, and all other exceptions, the plaintiff propounds the following cross-interrogatories:

1st. Through whom were the negotiations made, by which the bonds were obtained? From whom were they obtained? Who was the owner of the bonds prior to yourself? Were you in any way indebted to the said owner, or had you any commercial relations with him or them? Are you not the intervenors herein?

2d. Did you, or either of you, ever read the act No. 95 of the legislature of Louisiana for 1871, or that portion of it which provided for the issue of the bonds named in interrogatory No. 3? Did you ever make any inquiries to ascertain whether the conditions, or any of them, upon which said bonds were to be issued, had been complied with?

133 If yea, state when, where, and of whom, and what inquiries you made. Did you learn that any of the conditions precedent to their issue were ever complied with? and, if yea, state from whom you obtained your information, and all the circumstances connected therewith. State fully.

3d. Have you, or did you ever have, any connection with or interest in the New Orleans, Mobile and Texas Railroad, defendant herein, or with any railroad extending in whole or in part from Mobile to New Orleans, and to the Sabine River and Shreveport, in Louisiana, or to Houston, in the State of Texas? If so, what is the nature of that connection, or interest, and when, or how, and with whom was that connection formed, and what are the circumstances attending the connection or interest aforesaid?

(Signed) A. P. FIELD,
Atty. Gen'l.

(Signed) J. Q. A. FELLOWS & J. B. COTTON,
Of Counsel.

Caption.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered, that on the twenty-fifth day of November, one thousand eight hundred and seventy-four, at the office of Simon Sterne,

esq., No. 59 Wall street, in said city of New York, I, Edwin F.
134 Corey, junior, a commissioner for the State of Louisiana, in and for the State of Louisiana, in and for the State first-above written, duly commissioned and sworn, empowered to administer oaths and take depositions, acting under and by virtue of the enclosed and annexed commission issued out of the superior district court for the parish of Orleans and State of Louisiana, in the case entitled. The State of Louisiana vs. Charles Clinton, auditor of public accounts, and John S. Williams and W. H. Guion, intervenors, being No. 369 of the docket of said court, have this day caused William H. Guion and John S. Williams, the witnesses named in the commission and interrogatories, both of whom reside in said city and county, to come before me, and after having been duly sworn that the answers which they should give to the interrogatories and cross-interrogatories annexed hereto should be the truth, the whole truth, and nothing but the truth, they answered as follows:

WILLIAM H. GUION answers first interrogatory as follows: William H. Guion; I am 56 years of age; I am a commission meachant and shipper, and reside in the city of New York.

William H. Guion answers second interrogatory as follows: John S. Williams and myself.

135 Wm. H. Guion answers third interrogatory as follows: We bought them some time near the end of June, 1872, in New York; I do not recollect the date; we paid seven hundred & ten dollars for each bond. We purchased at the time one hundred of those same bonds at the same price, of John Ponder, a broker, and they were delivered to us by L. Von Hoffman & Co.

Wm. H. Guion answers fourth interrogatory as follows: We were not advised of the existence of any facts which would invalidate said bonds, nor did we suspect then or now the existence of any such facts; on the contrary, we did know that the State had paid the coupon due previous to our purchase, and the one due succeeding our purchase.

Wm. H. Guion answers fifth interrogatory as follows: We paid seventy-one thousand dollars for the one hundred bonds, on the first day of July, 1872. The bonds are still owned by our firm.

Wm. H. Guion answers first cross-interrogatory as follows: Through John Ponder, a broker in New York, we obtained the bonds from L. Von Hoffman & Co., of New York. I do not know who owned the bonds prior to our purchasing them. We paid L. Von Hoffman & Co.
136 for them, and we were in no way indebted to their former owner that I am aware of; had no commercial relations with him or them, and I am a member of the firm who have intervened herein.

Wm. H. Guion answers to the 2nd cross-interrogatory as follows: I have never read the act inquired of or any portion of it; I made no inquiries to ascertain whether any conditions upon which the bonds were issued had been complied with; I assumed them to be a valid and subsisting indebtedness from the fact that the' appeared to have been duly issued, and that we bought them from responsible parties, and that two of the coupons had been paid by the State.

Wm. H. Guion answers 3rd cross-interrogatory as follows: I have no connection with or interest either individually, nor as a member of the firm of Williams & Guion, with the New Orleans, Mobile and Texas Railroad, or any other railroad in the South.

(Signed) WM. H. GUION.

Sworn to and subscribed on the day and at the place first aforesaid.

(Signed) EDWIN F. COREY, JUN'R.

Commissioner for the State of Louisiana in New York.

137 And the said JOHN S. WILLIAMS answered as follows:

To the first interrogatory he answers: John S. Williams, aged 60 years. I am a shipping-merchant, and reside at No. 6 East 45th street, in the city of New York.

To the second interrogatory he answers: Myself and William H. Guion.

To the third interrogatory he answers: I have no personal knowledge of the matter enquired of in this interrogatory; the purchase of the bonds enquired about was made by my partner, Mr. William H Guion. I know from our books that we purchased one hundred Louisiana State bonds and still hold them.

To the fourth interrogatory he answers: We were not advised and had no reason to suspect the existence of any facts tending to invalidate the said bonds.

To the fifth interrogatory he answers: I do not know of anything more.

To the first cross-interrogatory he answers: Of the matters inquired of in this interrogatory, I know nothing of my own personal knowledge, except that I am one of the intervenors herein.

To the second cross-interrogatory he answers: I never have read the act inquired of nor any part of it; made no such enquiries, and had no information on the subject other than what the face of the bond
138 showed, and the fact that two of the coupons were paid by the State.

To the third cross-interrogatory he answers: I have no interest nor connection with any of the roads inquired of in this interrogatory.

(Signed) JNO. S. WILLIAMS.

Sworn to and subscribed on the day and at the place first aforesaid.

(Signed) EDWIN F. COREY, JUN'R,
Commissioner for the State of Louisiana in New York.

And I do hereby further certify that the answers of the said witnesses, William H. Guion and John S. Williams, were reduced to writing by me, and that they both signed their respective answers in my presence.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first aforesaid.

[SEAL.] (Signed) EDWIN F. COREY, JUN'R,
Commissioner for the State of Louisiana in New York.

Testimony & notes of evidence.—Taken 9th & filed 14th January, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, &C., N. O., M. & Texas R. R. Co., and Williams & Guion, intervenors.
No. 369. Superior district court.

G. W. R. BAILEY, being duly sworn, says:

139 I was at first employed as division engineer. I was placed in charge of surveys and construction west of New Orleans, as division engineer, and Mr. Van Vleak, chief engineer, in August, '69. I remained in that capacity until the completion of the railroad to Don-

aldsonville, May, 1871—1st May, 1871. I was appointed chief engineer of the whole road east and west of the river on the 1st May, 1871, and in September of that year also general superintendent. I ceased to act as general superintendent in October, 1872, and as engineer at the close of the year 1872.

Q. State what work has been done on the railroad west of the Mississippi river by section, giving the time when any such portions were completed—such portions as are completed, if any, commencing from the river-bank.

(NOTE.—Counsel for the intervenors, Guion & Williams, objects to the question as irrelevant. Objection overruled.)

A. The work of laying the track west of the Mississippi River was begun on or about the 1st December, 1870. Forty miles of track were laid in the early part of 1871—were completed. The track was completed to Donaldsonville in the month of May, 1871—the latter part
140 of the month—on or about the 21st; I am not certain about the day now.

By Mr. Howe:

Q. Of May?

A. Yes, sir, of May. In the month of January, about the close of the month of January, 1871, somewhere about fifteen miles of track were laid—have been laid.

Q. And no more?

A. And no more; thereabout, to the best of my recollection.

Q. Now, beyond Donaldsonville?

A. There was no track laid beyond Donaldsonville until 1873—early in 1873, I believe.

Q. And then, how much?

A. There were about ten miles of track laid up to the 10th March, 1873, beyond Donaldsonville.

Q. How much of the road beyond that ten miles has been completed up to date west of Donaldsonville?

A. Something less than a mile has since been completed beyond the ten miles to carry the road to a point on White Castle plantation, convenient to Bayou Goula—it is something less than a mile—making in all eleven miles beyond Donaldsonville.

Q. And that is all the road that has been completed towards the Sabine or Houston?

A. Yes, sir.

Q. What portion has been surveyed?

141 A. The whole line from New Orleans to Houston.

Q. When was that survey completed?

A. In 1870; I think some time in 1870, to the best of my recollection.

Q. What portion of this railroad from Vermillionville to Shreveport has been surveyed, located, or completed?

(NOTE.—Counsel for intervenors object to the question. Objection overruled by the court, and exception reserved by counsel for intervenors.)

A. No regular survey was ever made of the line from Vermillionville to Shreveport.

Q. Or located?

A. Not regularly, not properly or continuously located.

Q. Was anything ever done?

A. Yes, sir; something was done.

Q. On that line north of Vermillion?

A. Yes, sir; it was supposed to be a part of the road.

Q. State what was done, and under what circumstances, and when it was done.

A. I was ordered to make a technical commencement of the work north of Vermillionville in October, 1871.

Q. Were those orders in writing?

A. Yes, sir.

Q. From whom?

A. The president of the company.

Q. Give his name.

A. James A. Raynor.

142 Q. Have you those written instructions?

A. I have.

Q. Will you produce them to the clerk?

A. (NOTE.—Witness produced the document referred to.) Yes, sir; these are—this letter.

NOTE.—Counsel for plaintiff offer in evidence the letter of instruction; filed, and marked "A."

NOTE.—Both intervenors offer in evidence a copy of the agreement of the New Orleans, Mobile & Chattanooga Railroad Company with the State of Louisiana, filed in the office of the secretary of state 22d April, 1871, under act of the general assembly of said State, approved 20th April, 1871.

(Counsel for the State object to the filing of the agreement, because it is not an agreement under the act of 1871. Objection overruled by the court.)

Examination resumed:

Q. What was done under that order?

A. A few hundred feet of line-stakes were driven, and on a few hundred feet of the line some earth-work was done on it in the direction of Shreveport from a point on the direction of the line to Houston, near Vermillion.

Q. At what time was that done?

A. It was on or about the 20th of October, 1871, I believe, as near as I can remember.

143 Q. Has anything been done on that line since?

A. Not to my knowledge.

Q. Have you had any communications with Mr. Raynor since that time in regard to that work referred to in this order?

A. If my memory serves me right, I had, a short time after the work was done.

By Judge Campbell, counsel for rl. rd. co.:

Q. Was he president of the railroad at that time?

A. Yes, sir; it was shortly after the work was done, in the latter part of October.

By Judge Campbell:

Q. While he was president of the railroad co.?

A. He was still president, I believe.

By Judge Howe, counsel for Williams & Guion:

Q. Are you sure of it; because document shows that he was not president on the 16th Oct.?

A. The tenor of the communication was that I had expended too much money.

By Judge Campbell, for railrd.:

Q. The question asked is, "Was he president of the railroad at the time?"

A. To the best of my recollection, he was at that time; it was in the latter part of October or early in November, 1871.

By counsel for the State:

Q. You were chief engineer of the road at that time?

A. I was, sir.

Q. As engineer, what did you do as to the location of the line
144 of the road from Vermillionville to Shreveport?

A. I think I just answered that question.

Q. Well, answer it again.

A. I ordered the location of a few hundred feet, and it to be staked out a few hundred feet of the line, and the grading of a portion of that line so staked out.

Q. Did you or not do that as a permanent location of that line?

A. I intended to have it located in such a manner that if it should ever be continued, that as much as was located would suffice for a permanent location.

Q. Was the survey of these few hundred feet reported to you?

A. Yes, sir; they reported it was done on their return.

Q. Were the notes of the survey reported to you?

A. I never received any notes; only a certificate that he had done it.

By Judge Howe, counsel for Williams & Guion:

Q. Who is "he?"

A. Thomas Kleinpeter, an assistant engineer, and a Mr. Thompson, who assisted him. I did not do the work myself.

Q. You did not go to Vermillion?

A. No, sir; I did not go myself.

By counsel for the State:

Q. Now, the question is, whether you ever had any notes of the survey of that line, so that you could have gone and located it
145 if the lines were erased.

A. No, sir.

Q. Were they furnished to your office?

A. No, sir. A certificate was furnished me of the facts I have stated by Mr. Kleinpeter, in compliance with my order to him.

Q. When you ceased to be engineer of the railroad, had there been at that time any notes of that survey, or any other survey, north of Vermillionville towards Shreveport, as chief engineer?

Q. No, sir; none for that company; I may say none were made for that company.

Q. Were surveys of the location approved by you first as chief engineer, while you were such, if any were made?

A. Certainly, they had to be adopted by me.

Q. You never adopted any for that company from Vermillionville towards Shreveport?

A. No, sir; and none were ever adopted, of course.

DOCUMENT A.

Instructions from J. A. Raynor to commence work.—Offered by plff., & filed 9th January, 1875.

OFFICE OF THE N. O., M. & T. R. R. Co.,
New York, Oct. 2nd, 1871.

G. W. R. BAILEY, Esq., *Chief Engineer:*

DEAR SIR: By the terms and conditions of the contract made with the State of Louisiana by the company, April 22d, 1870, under
146 and in accordance with the provisions of the act of the general assembly approved April 20th, 1870, the company obligated itself to commence the construction of the line from Vermillionville to Shreveport within six months, which limit of time will expire on the 20th or 22d of this month. For the company to comply with its obligation, as contained in the contract, it is necessary that the work should be commenced prior to the 20th inst. A single day's work by one man would do this, I suppose. It is for the interests of the company that the contract be complied with. You will therefore at once send one of your assistant engineers to Vermillionville, and at some convenient point north of Vermillionville run a line for a short distance, and commence the work by throwing up a small portion of embankment at some point, just enough for him to be able to file his certificate with you, properly attested before a notary, that such work was duly commenced on such a date—fixing such date prior to the 20th inst. It is desirable that it be done without comment or publicity in the press. All we want is to technically comply with the contract now, since we cannot properly locate the line north of Vermillion or commence its construction until after our main line has reached that point. Please give this matter
147 your prompt attention, and, when the ctf. is prepared, certify to it, to the effect that the work was done and the ctf. made by your direction as chief engineer, and then send the ctfc. to John J. Howell, secy., at this office.

Yours, very truly,
(Signed) JAMES A. RAYNOR, *Prest.*

(Superscription on envelope:) G. W. R. Bayley, esq., chief engineer, (in care of the New Orleans, Mobile & Chattanooga Railroad Co., lock-box No. 224,) New Orleans, La.

"OCT. 2d, 1871.—Letter from J. A. Raynor, presdt., requiring me to commence work on Shreveport branch line to comply with requirements of act La. legislature."

DOCUMENT B.

Copy of certificate of commencement of work, &c.—Offered by intervenor & filed 9th January, 1874.

(Copy.)

Certificate of the commencement of the construction of the branch road of the New Orleans, Mobile and Texas Railroad from Vermillionville to Shreveport, in accordance with the provisions of section 1, act No. 95, approved April 29th, 1871, of the Louisiana legislature, entitled "An act to relieve the State from its obligations to guarantee the second-mortgage bonds of the New Orleans, Mobile and Texas Railroad," &c., &c.

148 [SEAL.] VERMILLIONVILLE, LOUISIANA, *October 20th*, 1871.

We, Thomas Kleinpeter, G. H. Thompson, and R. H. S. Nor-

wood, officers of the New Orleans, Mobile and Texas Railroad Company, do hereby certify that the work of construction of that portion of said railroad lying between Vermillionville and Shreveport was duly commenced on the seventeenth day of October, A. D. 1871, and has been continued in progress up to the day and date of this instrument.

Witness our signatures this twentieth day of Octbr., 1871.

(Signed) THOS. KLEINPETER, *Div. Engr.*
(") G. H. THOMPSON, *Asst. do.*
(") R. H. P. NORWOOD.

STATE OF LOUISIANA,
Parish of Lafayette:

I, William Brandts, recorder and ex-officio notary public, duly commissioned and qualified in and for the above-written parish and State, hereby certify that Thomas Kleinpeter, G. H. Thompson, and R. H. P. Norwood, personally known to me, severally and personally appeared before me, officially, and acknowledged that every one of them severally signed and made the foregoing or annexed declaration, and declared they, and each of them, were personally present on the ground when the laborers were engaged and the work duly progressing on that
149 portion of the New Orleans, Mobile and Texas Railroad lying between Vermillionville and Shreveport on the seventeenth day of Octbr., A. D. 1871.

Given under my hand and official seal this the seventeenth day of October, 1871.

[SEAL.] (Signed) W. BRANDT, *Recorder.*

STATE OF LOUISIANA,
Parish of Orleans:

I, G. W. R. Bailey, chief engineer of the New Orleans, Mobile and Texas Railroad Company, do hereby certify that the work of construction of that portion of the road between Vermillionville and Shreveport, attested to in the foregoing certificate and made part hereof, was commenced on the day, month, and year therein stated, and carried on in compliance with my directions and instructions, and in conformity with the requirements of the law provided therefor.

In faith whereof I hereunto set my hand on this, the 23d day of October, A. D. 1871.

(Signed) G. W. R. BAILEY,
Chief Engineer.

STATE OF LOUISIANA,
Parish of Orleans:

Be it known to all whom it may concern, that on the 23d day of October, A. D. 1871, personally came and appeared before me, the undersigned, justice of the peace, G. W. R. Bailey, chief engineer of the New Orleans, Mobile and Texas Railroad Company, who, after being
150 duly sworn, says that all the allegations contained in the foregoing certificate are true and correct.

Sworn to and subscribed before me on this day, month, and year first above written.

(Signed) W. L. EVANS,
Second Justice Peace, Parish of Orleans, La.

STATE OF LOUISIANA:

OFFICE SECRETARY OF STATE,
New Orleans, October 23d, 1871.

I do hereby certify that the paper of which this is a duplicate original was duly filed in my office on the day of the date hereof by Mr. G. W. R. Bailey, chief engineer of the New Orleans, Mobile and Texas Railroad Company.

Given under my hand and the seal of the State this 23d day of October, A. D. 1871.

[SEAL OF STATE.] (Signed) F. J. HERRON,
Secy. of State, pro tem.

Testimony of Charles A. Whitney.—Taken in open court & filed 9th January, 1875.

Superior dist. court.

STATE OF LOUISIANA
vs.
CHAS. CLINTON, &C. } No. 369.

I recognize the agreement now shown me, XX, dated Dec. 12th, 1871. The signature is that of Mr. Charles Morgan, with which
151 I am familiar, having often seen him write. The agreement was made in pursuance of negotiations that took place in New York, with a portion of which I was familiar, being present as his friend and agent. About August, 1871, a desire was expressed to Mr. Morgan at New York, by prominent citizens of New Orleans, that he should become identified with the New Orleans, Mobile and Texas Railroad Co., in order to give vitality to an attempt to extend the road to the city of Houston and its other branches.

This was about the commencement of the negotiations, which finally culminated in the contract alluded to. Mr. Morgan transferred the graded portion of the *of the* road-bed formerly belonging to the Opelousas Railroad Co., from Berwick's Bay northwestwardly, and the rights and franchises pertaining to same, owned by him; and they took possession of same soon after the execution of the contract. He fulfilled his portion of the said contract to the letter, but they failed to fulfill theirs in certain particulars, as claimed by Mr. Morgan in his bill in equity filed in the circuit court of the United States some year or two after, as will be ascertained by reference to the bill.

(Signed) CHAS. A. WHITNEY.

NEW ORLEANS, *January 8th*, 1875.

152 Cross-examined:

The sale spoken of in my examination-in-chief embraced the graded portion of the road from Brashears northwestward. It was graded before the war to Vermillionville—to Brashear, and from Vermillionville only in detached stretches to Opelousas. I got this information through the engineers. I have no personal knowledge of it. Mr. Bailey is chief engineer of the road. I never have been over the road from Vermillionville to Opelousas, and never had seen this grading.

The nature of the suit in the circuit court is to recover the money and property transferred and paid over in accordance with the contract, in consequence of their failure to comply with their portion of the con-

tract. The suit is still pending. There are grounds of fraud set up in the bill. The railroad company has not complied with any portion of their contract except the delivery to Mr. Morgan of the bonds.

COPY OF DOCUMENT X.

Agreement.—Charles Morgan with the N. O., Mobile & Texas Rl. Rd. Co., Decer. 12th, 1871.—Offered in evidence by intervenors, & filed in lieu of the original, January 9th, 1875.

Memorandum of agreement made the twelfth day of December,
153 eighteen hundred and seventy-one, between Charles Morgan, of the first part, and the New Orleans, Mobile and Texas Railroad Company, of the second part.

First. The said Charles Morgan agrees to sell, convey, and transfer to said railroad company, and the said company agrees to purchase from him, for the price of seven hundred and ninety-seven thousand eight hundred dollars, to be paid in the manner hereinafter provided, the five thousand and seventy-eight shares of the capital stock of the Pontchartrain Railroad Company belonging to him, and his two steamers, called, respectively, the Laura and the Frances, with their engines and machinery, tackle, apparel, and furniture, and all their appurtenances, and the wharf and wharf-property in the city of Mobile owned by said Charles Morgan, including and to include all the wharf-property in Mobile owned by said Charles Morgan, with the appurtenances thereof, all of which things are sold and to be conveyed by said Charles Morgan, with a good title, free and clear of all encumbrance, his wife uniting in the conveyance of the wharf-property, if the parties of the second part, under the advice of counsel, shall so require, and the same are to be conveyed, transferred, and delivered over as soon as the proper legal instruments therefor can be prepared, for doing which the said Charles
154 Morgan shall at once give the proper directions; the delivery of the steamboats, &c., to be made in Mobile or New Orleans to the representatives or agents there of the parties of the second part; and until such delivery is made, the boats, with their appurtenances, to be at the risk of said Charles Morgan.

Second. The said Charles Morgan agrees to sell, transfer, and convey to said railroad company, and said company agrees to purchase from him, for the price of two hundred and fifty thousand dollars, with interest at the rate of eight per cent. per annum on that sum from April fifteenth, one thousand eight hundred and seventy, to be paid in the manner hereinafter provided, the franchise, rights, and privileges now owned by said Charles Morgan for the construction and maintenance of a line of railroad running from Brashear City northwestwardly, so as to connect with the main line of railroad of the New Orleans, Mobile and Texas Railroad Company at or near Vermillionville, and thence northwardly to the Red River, together with all the lands and rights of way for or in respect of such railroad from Brashear City northwestwardly to such point of connection at or near Vermillionvillle, and likewise for a railroad north of that point to the Red River, which the said Charles Morgan now owns or is entitled unto, and the benefit of all work
155 heretofore done and improvements heretofore made upon the same in the shape of grading or otherwise, and all the property and rights whatsoever or appertaining to or procured for the purposes of such railroad from Brashear City northwestwardly and northwardly as aforesaid, which the said Charles Morgan now owns or is entitled to. The rights

and things to be transferred to said railroad company under this second article are to be conveyed and transferred at the trial and in the manner following, that is to say, as soon as the proper instruments of transfer and conveyance can be prepared in New Orleans, for the preparation of which the said Charles Morgan is at once to give the proper directions, and when such instruments are prepared the said Charles Morgan is at once to execute and deliver the same to said railroad company, he procuring his wife to unite therein, if the said company, under the advice of counsel, shall so request; and the said the New Orleans, Mobile and Texas Railroad Company agrees with the said Charles Morgan that it will construct and complete such railroad from Brashear City westwardly to connect with its own main line at or near Vermillionville, and will complete the same to such point of connection by the time at which
156 it shall complete its main line of railroad from Vermillionville to Houston.

Third. The said Charles Morgan agrees to subscribe, to the extent of one million two hundred and fifty-eight thousand dollars, upon the same terms as the other subscribers, the now pending subscription for the securities of the said The New Orleans, Mobile and Texas Railroad Company, which has been subscribed by Oakes Ames, E. D. Morgan, and others, and which has been exhibited to said Charles Morgan, which subscription of said Charles Morgan shall be for eight hundred and ninety-nine thousand dollars, first-mortgage eight-per-cent. bonds, and three hundred and fifty-nine thousand dollars of the second-mortgage bonds, the latter to be guaranteed by the State of Louisiana, which subscription of said Charles Morgan will entitle him by its terms, in consideration of his paying twelve hundred and fifty-eight thousand dollers, to twelve hundred and fifty-eight thousand dollars of eight-per-cent. income-bonds, and twelve hundred and fifty-eight thousand dollars of stock, in addition to the eight hundred and ninety-nine thousand dollars of first-mortgage bonds, and three hundred and fifty-nine thousand dollars of guarantied bonds.

Fourth. The two sums of seven hundred and ninety-seven thousand eight hundred dollars and two hundred and fifty thousand
157 dollars, and interest, which are payable to said Charles Morgan by the provisions of the foregoing first and second articles are to be satisfied to him by means of his retaining the amount thereof out of the one million two hundred and fifty-eight thousand dollars, which will be payable by him to said railroad company under his subscription provided for in the third article.

Fifth. It is understood and agreed between the said The New Orleans, Mobile and Texas Railroad Company, as owners of the above-mentioned five thousand and seventy-eight shares of stock of the Pontchartrain Railroad Company, (the entire stock of that company being seven thousand five hundred shares,) in so far as they, as such owners, can so agree on the one side, and the said Charles Morgan on the other side, that the said Charles Morgan shall and will purchase from the said The Pontchartrain Railroad Company, and the said Pontchartrain Railroad Company shall and will sell to him, for the price of two hundred and fifty thousand dollars, to be by him paid in cash to the Pontchartrain Railroad Company therefor, that part of the railroad of said company, being about one mile and a quarter in length, which lies between their old depot and their new depot in New Orleans, including such new depot, together with all the rights,
158 privileges, and franchises belonging to that part of the Pontchartrain Railroad so sold, held under grants from the State of Louisiana and the city of New Orleans respectively. And the said Charles

Morgan hereby agrees and binds himself to accept such purchase and pay such two hundred and fifty thousand dollars in cash for the above-specified portion of the Pontchartrain Railroad Company's railroad upon and as soon as the conveyance and transfer to said Charles Morgan shall be made. And the said the New Orleans, Mobile and Texas Railroad Company hereby agree with the said Charles Morgan, on his own behalf, and in behalf of the holders of the remaining twenty-four hundred and twenty-two shares of the capital stock of the Pontchartrain Railroad Company, that at any time before the first day of February, one thousand eight hundred and seventy-two, the New Orleans, Mobile and Texas Railroad Company shall and will purchase from any of the holders thereof who may within such time elect to sell the same, such parts of said remaining twenty-four hundred and twenty-two shares as such respective holders may choose to sell at and for the price at the par value thereof, provided such holders so electing to sell shall
159 at the same time subscribe in like manner and on the like terms as said Charles Morgan has agreed to do by the third article of this agreement, and for an amount equal to the par value of such Pontchartrain Railroad Company's stock to them elected to be sold, the subscription for the securities of the New Orleans, Mobile and Texas Railroad Company mentioned in the said third article, so as that the sum payable by said parties respectively upon the last-mentioned subscription shall provide the means of paying for such Pontchartrain Railroad stock so sold by them, and the same shall be applied accordingly. And it is understood and agreed that if there be found to be any technical legal difficulty in the making such absolute conveyance and transfer to said Charles Morgan of such portion of said Pontchartrain Railroad as above provided, said Charles Morgan will accept as the equivalent thereof, instead of such absolute conveyance and transfer, a perpetual lease to him of such portion of said Pontchartrain Railroad, free of rent, but subjecting him to the obligation to pay the taxes thereon and keep the same in operation, and in this event the two hundred and fifty thousand dollars shall be payable by him as a consideration for such
160 perpetual lease as if it were a sale.

Sixth. It is declared to be the intention and purpose of the parties to this agreement, and one of the objects of the arrangements between them which are hereinbefore set forth, to put an end to the opposition and rivalry in respect of the passenger and freight business between New Orleans and Mobile which has heretofore existed between the railroad of the said the New Orleans, Mobile and Texas Railroad Company, running between those two cities, and the steamboat-line which said Charles Morgan has been hitherto running between the terminus of the Pontchartrain Railroad and the city of Mobile, and it is declared to be the intent hereof to concede and assure to the said the New Orleans, Mobile and Texas Railroad Company, so far as is or may be in the power of said Charles Morgan, the whole of said passenger and freight business between Mobile and New Orleans, or the terminus of the Pontchartrain Railroad, or any other railroad built or to be built, running out of New Orleans towards Mobile, and for the considerations aforesaid, and as a part of the said general arrangement, it is understood and agreed that the said Charles Morgan hereby agrees with the New Orleans, Mobile and Texas Railroad Company that during
161 the term of fifteen years from that date he will not, or shall not, run or be directly or indirectly concerned or interested, either personally or consciously, as stockholder of any corporation other than the New Orleans, Mobile and Texas Railroad Company, in the run-

ning of any steamboat between Mobile and New Orleans, or any point between Mobile and New Orleans, between which point and New Orleans there shall be connections by railroad or otherwise, and in case of violation of this covenant, the said Charles Morgan further agrees to pay to the said the New Orleans, Mobile and Texas Railroad Company the sum of one thousand dollars for each and every day on which there shall be such violation as the liquidated damages for such breach of covenant.

Seventh. Within fifteen days after the signing of this contract, the said Charles Morgan shall cease his opposition line by steamers between the terminus of the Pontchartrain Railroad and Mobile, and thereafter, until the time for delivery of the things mentioned in the first article, he shall not run or be interested in the running of any steamboat between those points.

Eight'. The gross amount of all receipts for through freights, passengers, and mails for the whole distance between New Orleans
162 and Houston upon the railroad which is contemplated to be run by the parties of the second part between New Orleans and Houston, and the gross amount of all receipts upon the railroad between New Orleans and Brashear City, owned by said Charles Morgan, derived from through-freights, passengers, and mails carried by rail the whole distance between New Orleans and Houston, shall, for the term of seven years after the said railroad between New Orleans and Houston shall be put in operation, be stocked together, and divided between the parties hereto pro rata in proportion to the length of the completed railroads owned by the said parties, respectively, estimating such lengths as follows, viz: For said Charles Morgan, the length of his railroad between New Orleans and Brashear City, and for the New Orleans, Mobile and Texas Railroad Company, the length of their entire line of road or roads between New Orleans and Houston, including the branch between Vermillionville and Brashear City, and it being especially understood and agreed that the stipulations of this eight' article refer only to receipts of said roads derived from through-freight, passengers, and mails passing by rail the entire distance between the points above specified, viz, New Orleans and Houston, and that the same have
163 no reference to receipts for way-passengers, freights or mails for less distances.

All suits and legal proceedings now pending between the parties to this agreement shall, immediately upon the making of this agreement, be discontinued, each party paying his or its own costs and expenses therein.

In witness whereof the said contracting parties have hereunto set their hands and seals (the New Orleans, Mobile and Texas Railroad Company by its vice-president, duly authorized) on the day and year first above written.

(Signed) CHAS. MORGAN.

(Signed) THE NEW ORLENS, MOBILE & TEXAS RAILROAD CO.,
By JOHN A. GRISWALD,
Vice-President.

Attest:
[SEAL.] (Signed) JOHN J. HOWELL, *Secy.*

In presence of—
(Signed) J. RUSTOUL,
(") J. L. MACAULEY.

REC. 757—5

(Copy.)

Resolved, That Messrs. Griswold, Banker, and *and* Inniss be, and are hereby, appointed a committee, with full authority, to confer with Mr. Charles Morgan relative to the existing competition between New Orleans and Mobile, and in regard to the exchange of the steamer Thomas Kelso for the stock of the Pontchartrain Railroad Company held by Mr. Morgan, conditional upon the withdrawal of the steamboats from the line between New Orleans and Mobile, and to make such
164 arrangements with Mr. Morgan as they shall deem for the interests of this company.

Resolved, That Joseph Seligman be, and is hereby appointed a member of the committee created by resolution adopted July 18th, 1871, in addition to the persons named in said resolution, with like authority with said persons to confer with Mr. Charles upon the questions stated in said resolutions.

Resolved, That L. P. Morton and L. A. Von Hoffman be, and they hereby are, added to the committee appointed by resolution adopted June 18th, 1871, to negotiate with Mr. Charles Morgan on the part of this company, and that they be vested with like full power and authority as was given to the original committee.

DOCUMENT Y.

Copy sale of franchises, &c., by Chas. Morgan & wife to N. O., M. & T. R. R. Co. 18th April, 1872, offered by intervenors & filed 9th Jan'y, 1875.

UNITED STATES OF AMERICA.
State of New York, City of New York:

Be it known that on the 20th of February, 1872, before me, Charles Nettleton, a commissioner of the State of Louisiana for the State of
165 New York, duly appointed under the law of Louisiana with the power and authority to take the acknowledgement and proof of the execution of any instrument of writing for the sale and transfer or assignment of any property, moveable or immoveable, and of rights, &c., personally came and appeared Charles Morgan, a citizen of the State of New York, resident in the city of New York, and Mary Jane Morgan, his wife, who declared that for and in consideration of the price and sum of two hundred and eighty-three thousand two hundred and five dollars and forty-seven cents, ($283,205.47,) the receipt of which is hereby acknowledged, and for which they grant acquittance, they do by these presents grant, bargain, and sell, to the New Orleans, Mobile and Texas Railroad Company, created by the laws of the State of Alabama, and likewise recognized by and existing under the authority of the State of Louisiana, herein represented by John A. Griswold, the president of said company, here present and accepting for the said New Orleans, Mobile and Texas Railroad Company, all the right, title, and interest which they, the said Charles Morgan and wife, acquired and are in law possessed of under a certain sale made on 22nd day of April, 1870, by the sheriff of the parish of Orleans, in
166 the State of Louisiana, to the said Charles Morgan, in pursuance of an adjudication at a public sale made by the said sheriff on the twenty-second of March, 1870, by virtue of eight writs of fieri facias, issued, respectively, out of the seventh and fourth district courts of the parish of Orleans, in said State of Louisiana, at the suit of Samuel Engler vs. the New Orleans, Opelousas and Great Western Railroad Company, Charles B. Singleton vs. the same, Miles Taylor vs. the same,

Charles Morgan vs. the same, and same vs. same, Nos. 2194, 2201, 2248, 2249, 2250, and 2251 on the docket of the said seventh dist. court, and of Jules A. Blanc vs. The New Orleans, Opelousas and Great Western Railroad Company, and same vs. same, Nos. 23287 and 23288 of the docket of the said fourth district court.

First. To the franchises of the New Orleans, Opelousas and Great Western Railroad Company, granted by the State of Louisiana to the said company, and giving it the right, as set forth in the charter and act of incorporation of the said company, to construct, maintain, and run and operate a railroad from the present terminus of the railroad constructed by said company from the town of Algiers, on the opposite bank of the Mississippi River from the city of New Orleans, to the city of
167 Brashear, on Berwick's Bay, that is to say, the franchises to construct, maintain, run, and operate a railroad from said terminus at Brashear, on Berwick's Bay, to or near Washington, on the Courtableau, in the parish of St. Landry, and thence to some point in the Sabine River, the boundary-line between Louisiana and Texas; and,

Second. The right of way and the land for depots, stations, and for the erection of buildings and works necessary for the use of a railroad, which had been acquired by the said New Orleans, Opelousas and Great Western Railroad Company for the construction of the said railroad, and for the running of the same, together with the embankments thrown up, the grading done, and all other works of every kind and description whatsoever, made or begun by said company on the route located by said company, for the construction of the railroad it was or is authorized and empowered by the State of Louisiana to construct, maintain, and operate as aforesaid, which said embankment and grading and other works extend from a point on Berwick's Bay, in the parish of St. Mary, through the western part of said parish, and through the parishes of Iberia and LaFayette and into the parish of St. Landry, being a distance of eighty miles, more or less.

168 And the said Charles Morgan, and the said Mary Jane Morgan, his wife, further declared that it was their intent and design to transfer all the rights in and to the above-described property sold by them as aforesaid to the said The New Orleans, Mobile and Texas Railroad Company, as they were transferred to them by and in virtue of the said sheriff's sale to the said Charles Morgan, and without any warranty, in such a manner that the said company are placed in their lieu and stead, in the same manner as if the said rights to said above-described property had been adjudicated directly to the said company, and the said sheriff's sale had been made directly to the said company, and not to the said Charles Morgan.

This instrument is made and the property and premises hereinbefore described are hereby transferred and conveyed in pursuance and fulfillment of the terms and provisions of a certain agreement made between the parties hereto, dated the twelfth day of December, A. D. 1871.

The U. S. internal-revenue stamps of the amount of two hundred & eighty three $\frac{50}{100}$ dollars are hereto annexed.

This done and passed at my office, at the city of New York, on the day, month, and year before written, in the presence of James Rintoul and

Henry S. Denison, witnesses, who sign these presents with the said
169 appearers and me, the commissioner, after reading the same.

(Signed) CHARLES MORGAN.
(") MARY J. MORGAN.
NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY,
(Signed) JAMES RINTOUL. JOHN GRISWOLD, *President.*
HENRY S. DENISON.
[SEAL] (Signed) CHARLES NETTLETON,
Commissioner for Louisiana in the City of New York.
JAMES RIFTOUL.
HENRY S. DENISON.

This is to certify that Charles Nettleton is, and was at the date of the annexed instrument, a commissioner of deeds for the State of Louisiana in the city, county, & State of New York, and his attestation thereof is in accordance with law, and 'is signature thereto is genuine.

Given under my hand and seal of State this 11th day of April, A. D. 1872.

New Orleans, April 18th, 1872.

[L. S.] (Signed) F. J. HERRON, *Sec'y of State.*
(Signed) C. B. FISH, *D'y.*

I, the undersigned, register of conveyances in and for the parish of Orleans, do hereby certify that the within instrument of writing is a correct copy of an act under private signature duly registered in Conveyance-book 102, folio 256, under the date of the 18th April, 1872.

New Orleans, January 9th, 1875.

[SEAL] (Signed) C. B. FISH, *Rege'r.*

170 *Opinion of Attorney-Gen'l Belden.—Offered in evidence by intervenors W. & G., 9th January*, 1875.

Opinion of the attorney-general.

Hon. H. C. WARMOTH, *Governor of Louisiana*:

SIR: In reply to your communication touching the liability of the State of Louisiana on the bonds issued to the New Orleans, Mobile and Texas Railroad Company, and the legality of their issue, I respectfully submit as my opinion that the bonds in question were legally issued and that the State of Louisiana is bound for the payment thereof. There are but two questions presented in this inquiry: 1st. It is the creation of a debt in violation of the 3rd amendment to the constitution of the State of Louisiana, which reads as follows: "Prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars;" and, 2nd, "conceding the act No. 31 of 1870 to be constitutional and binding on the State, does the change of said obligation to another form, since the adoption of the amendment, invalidate the bonds?"

It would seem that the answer of the first question is the answer of the second. In the case of State, on relation of Solomon & Simpson, vs. James Graham, auditor, 23d Annual Reports of Louisiana, the
171 supreme court considered the question entirely upon the basis of the creation of a State debt after the adoption of the 3rd amendment to the constitution above cited—thus maintaining that the State had a right to create a debt prior to the said amendment without constitutional limitation.

The theory of the decision quoted is, that all contracts and appropri-

ations prior to the constitution amendment are valid and binding on the State. Therefore unconstitutionality could only obtain when, in the language of the court, the debt is "created" since the amendment to the constitution. The original act, No. 31 of 1870, granting bonds to said railroad company, became a law long anterior to the adoption of the amendment to the constitution, limiting the State debt to twenty-five millions.

In connection with this the inquiry might be made as to the effect the adoption of said amendment might have on this contract, the debts exigible and conditional being at the time of adoption over twenty-five millions.

This would seem, neither legally or by the desire of the people of this State, to make any difference.

It is a contract based upon a valid consideration, a quid pro quo.
172 You run your road and build up our trade, open avenues to commerce in regions now shut out from trade, run your road and give us the wealth that must result therefrom, and we will give you our bonds. This constitutes not only a legal and valid contract between the railroad company and the State, but such contract as that any person in this State should seek to carry out faithfully, as among the best means by which the wealth of Louisiana can be best brought into living, practical development and the happiness and prosperity of all increased. Besides this, even was there an intention or desire to repudiate this contract, it could no more be done by the amendment to the constitution, than by legislative act, as in either instance it would be the divestiture of a vested right. The doctrine that a vested right cannot be divested has been recognized in the decision above referred to, and is but the repetition of a principle of right recognized by every well-organized government in the world to-day.

I am, therefore, of the opinion that the act and contract of 1870 is legally binding on the State, and proceed to the second and last inquiry, that is, as to whether the putting the same obligations in another form since the adoption of the amendment is the "creation of a
173 debt;" and the question does not merit discussion. As between the two contracting parties, they can in manner and form of obligation change it as they may see proper.

The mere change of form and manner of execution does not obliterate the old, nor make, or rather create, a new debt. It is the same debt, and, if originally binding, it is equally so in a new form. I am, therefore, of the opinion that the State is legally bound for payment of these bonds, the contract under both the acts of 1870 and 1871 being constitutional and valid. The authorities are numerous in support of my opinion, running through almost every State. The contract is not only legal, but meets the hearty approbation of every person in this State who has its welfare at heart.

Respectfully submitted.

S. BELDEN,
Attorney-General.

3 *certificates (of 25,000 shares) of stock of the New Orleans, Mobile & Chattanooga R. R. Co., offered in evidence by intervenors, W. & G., 9th January,* 1875.

(Copied from the original.)

UNITED STATES OF AMERICA:

The New Orleans, Mobile and Chattanooga Railroad Company, a cor-

poration organized and existing under and by virtue of its char-
174 ter granted by the State of Alabama, and recognized and adopted by special laws of the States of Tennessee, Mississippi, Louisiana, and Texas, and of the United States.

Number 794.] [Shares, 10,000.

Registered April 8th, 1871. [Signed] J. B. ROESTON, *Reg'r.* 10,000 shares. For { The Farmers' Loan and Trust Company

This is to certify that the State of Louisiana is the owner of ten thousand shares of one hundred dollars each of the capital stock of the New Orleans, Mobile and Chattanooga Railroad Company, transferable only on the books of the company at its transfer agency in the city of New York, in person or by its legal representatives upon surrender and cancellation of this certificate.

This certificate, however, is to be of no effect or validity until countersigned and registered by the secretary, and also by the Farmers' Loan and Trust Company, registrar for this company of transfers in the city of New York.

In witness whereof the said company has caused this certificate to be signed by its president and treasurer, and countersigned by its secretary, this 8th day of April, 1871.

(Signed) JAMES A. RAYNOR, *President.*
(Signed) H. DURKEE, *Treasurer.*

Countersigned and registered.
(Signed) J. J. HOWELL, *Secretary.*

175 *Transfer in blank on reverse.*

Know all men by these presents that , for value received, have sold and transferred, and by these presents do sell and transfer, unto , of , shares of the capital stock of the New Orleans, Mobile and Chattanooga Railroad Company, standing in name on the books of the company, and do hereby constitute and appoint as true and lawful attorney, irrevocable for and name and stead, and for that purpose to make and execute all necessary act of assignment and transfer in the manner and form required by the said company, and to substitute one or more persons, with like full power, hereby ratifying and confirming all that said attorney, substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof have hreunto set band and seal this day of , 18 .

[L. S.]

UNITED STATES OF AMERICA:

To New Orleans, Mobile and Chattanooga Railroad Company, a
176 corporation organized and existing under and by virtue of its charter granted by the State of Alabama and recognized and adopter by special laws of the States of Tennessee, Mississippi, Louisiana, and Texas and of the United States.

Number 795.] [Shares, 10,000.

10,000 shares, For { The Farmers' Loan and Trust Company. Registered April 8th, 1871. [Signed] J. B. ROBERTS, Regr.

This is to certify that the State of Louisiana is the owner of ten thousand shares of one hundred dollars each of the capital stock of the New Orleans, Mobile and Chattanooga Railroad Company, transferable only on the books of the company, at its transfer agency in the city of New York, in person, or by its legal representatives, upon surrender and cancellation of this certificate.

This certificate, however, is to be of no effect or validity until countersigned and registered by the secretary, and also by the Farmers' Loan and Trust Company, registrar for this company of transfers in the city of New York.

In witness whereof the said company has caused this certificate to be signed by its president and treasurer, and countersigned by its secretary, this 8th day of April, 1871.

(Signed) JAMES A. RAYNOR, *President.*
(") H. DURKEE, *Treasurer.*

Countersigned and registered.
(S'g'd) J. J. HOWELL. *Secretary.*

NOTE.—Same blank transfer on reverse as in No. 794.

177 UNITED STATES OF AMERICA:

The New Orleans, Mobile and Chattanooga Railroad Company, a corporation organized and existing under and by virtue of its charter granted by the State of Alabama, and recognized and adopted by special laws of the States of Tennessee, Mississippi, Louisiana, and Texas, and of the United States.

Number 796.] [Shares, 5,000.

5,000 shares, For { The Farmers' Loan and Trust Company. Registered April 8th, 1871. [Signed] J. B. ROBERTS, Regr.

That is to certify that the State of Louisiana is the owner of five thousand shares of one hundred dollars each of the capital stock of the New Orleans, Mobile and Chattanooga Railroad Company, transferable only on the books of the company at its transfer agency in the city of New York, in person or by its legal representatives, upon surrender and cancellation of this certificate.

This certificate, however, is to be of no effect or validity until countersigned and registered by the secretary, and also by the Farmers' Loan and Trust Company, registrar for this company of transfers in the city of New York.

In witness whereof the said company has caused this certificate to be signed by its president and treasurer and countersigned by its secretary this 8th day of April, 1871.

178 (Signed) JAMES A. RAYNOR, *President.*
(") H. DURKEE, *Treasurer.*

Countersigned and registered.
(Signed) J. J. HOWELL, *Secretary.*

Same blank transfer on reverse as on cert. No. 794.

Bill of exceptions of intervenor The New Orleans, Mobile & Texas Railroad Co.

(See page 147.)

Bill of exceptions of Williams & Guion.—Filed 9th January, 1875.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, &C., WILLIAMS & GUION, intervenors. } No. 369.

Bill of exceptions of Williams & Guion.

Be it remembered that on the trial of this cause the plaintiff called as witness G. W. R. Bailey, and offered to show by his testimony that the railroad company, also an intervenor herein, did not commence that part of its railroad from Vermillionville to Shreveport within six months from the date of act 95 of 1871, to all which testimony the said Williams & Guion then and there objected, for the following reasons:

1. That by the act No. 95 of 1871 itself, the beginning of the said work was not a condition-precedent to the issue of the bonds; but, on the contrary, they were to be issued prior to such beginning in
179 exchange for an equal amount of stock in the company, and prior to the filing of the personal agreement to begin the work at a special time.

2. That on the face of the said law, No. 95 of 1871 it was not prescribed that the work should be begun, under pain of nullity, within a certain time, but that an agreement of the company to so begin said work, with certain waivers and acquittances of existing claim against the State, should be filed, a violation of which agreement, there being no penalty or nullity denounced, could only give rise to an action of damages, and could in no wise impair the obligation of the bonds.

3. That the State has always retained and still holds the stock it received in exchange for said bonds; which shares of stock, together with the waiver and acquittance by the railroad company provided by the act of existing claims against the State, were the consideration of said bonds.

4. That this cause was not remanded by the supreme court for the purpose of this inquiry, but for a different and specific purpose.

5. That the intervenors Williams & Guion, being holders of bonds in good faith and before maturity, had a right to presume that all formalities required in their issue had been observed. That if the
180 bonds could have been lawfully issued under any circumstances, said Williams & Guion had a right to presume they were so issued, and the State is estopped to show any informality in the course of their issuance or in the history of the bonds as between itself and the railroad company.

But the court overruled the objections on the ground that they went to the effect only, and the intervenors then and there duly excepted.

(Signed) JACOB HAWKINS, *Judge.*

Order & continuance.—Minutes January 9th, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON ET AL. } No. 369.

This case, assigned for this day for trial, came on. J. B. Cotton, J.

Q. A. Fellows, and Henry C. Dibble, for the plaintiff, The State of Louisiana. Kennard, Howe & Prentiss, for Williams & Guion, intervenors. John A. Campbell, for the New Orleans, Mobile and Texas Railroad Company, intervenors.

After hearing pleadings and evidence, the same was ordered to be continued to the 14th inst., for argument.

181 *Testimony taken 14th & filed 18th January*, 1875.

Superior district court.

STATE OF LOUISIANA
vs.
CLINTON & DUBUCLET. } No. 369.

Present, J. B. Cotton, J. Q. A. Fellows, for plff.; John A. Campbell, Kennard, Howe & Prentiss, for intervenors.

Testimony taken in the superior district court for the parish of Orleans, Thursday, Jan'y 14th, '75.

Testimony of Mr. James Campbell.

Examination by Judge Howe:

Q. You are book-keeper in the State treasurer's office?

A. Yes, sir.

Q. Will you please tell the court whether or not the one-mill tax contained in the act of 1871 has been regularly estimated and collected up to the time of the funding-bill of January, 1874?

A. Yes, sir.

Cross-examination by Judge Cotton:

You were requested the other day by both counsel to make a statement of the amount of the interest paid on these bonds, also to state when those bonds were delivered to the company. Was there any record of these bonds on the auditor's books?

A. I enquired at the office of the chief clerk for the books; there is no records of the bonds in the auditor's books; they have never
182 been registered in the auditor's office.

Q. When were they registered?

A. On April 21st, 1871.

Q. No notice on the books of the auditor?

A. No, sir.

Q. Did he settle it?

A. No, sir; there is no entry, simply for the payment of the coupons.

Q. What amount has been paid on the coupons?

A. Coupon number t'ree, except seventeen; coupon number one was turned over (by the governor, Warmoth) to Mr. Graham, to pay, on the 29th day of December, 1871. It was on the bond-book of the office.

Q. Have you the report of the auditor?

A. Yes, sir.

Q. Do you know how the auditor made this entry?

A. Officially, probably; I know at the time of making out the report that the auditor inquired at the secretary's office whether these bonds had been issued or not, as reported, and from a memorandum he put them in his report.

Q. At whose office?

A. From the governor's or the secretary of state's, I don't know which.
Q. What is the date of that report?
A. 1874.

(Copy of act April 21st, '71. 1871, April 21st, (2,500) twenty-
183 five hundred bonds, each one thousand dollars, ($1,000.00,) New Orleans, Mobile and Texas Railroad Company, exchanged for stock of said company, subscribed by the State, in accordance with the second section of the act 95, 1871, April 21st. 1911. Amount, two hundred and fifty thousand dollars, ($250,000.00.)

Transcript to be used if necessary in the supreme court by either party.)

Mr. L. J. DODGE, being duly sworn, deposes as follows:

Direct examination:

Q. You were contractor on the Chattanooga Railroad west of New Orleans?
A. Yes, sir.
Q. State where the first forty miles of that road was completed, and when it was completed to Donaldsonville.
A. The first forty miles about the first of April, 1871, between the first and fifth—I don't know exactly which. The track was laid to Donaldsonville, and finished the 17th day of May, 1871. There is now about ten miles of it laid west of Donaldsonville.
Q. When was that laid?
A. In August, 1874, half a mile that was completed; ten miles were completed about the tenth day of March, 1873, and the last half-mile was completed in August, 1874.
184 Q. What is the source of your knowledge as to the completion of this work?
A. Personal observation.
Q. Did you lay any part of it?
A. I laid a part of it.
Q. How much?
A. About three miles of it.
Q. You have been on the road frequently?
A. Yes, sir.
Q. You were the contractor at the time.
A. Yes, sir.
Q. There is no road completed beyond ten and a half miles beyond Donaldsonville?
A. No, sir.
Q. Have you made an estimate of the cost of the road west of the Mississippi?
A. As near as I can.
Q. How much do you think it would cost west of Vermillionville?
A. I could not say how much it would cost west of Vermillionville. This side of Vermillionville I should think it would cost about two millions five hundred thousand dollars, ($2,500,000.)

Testimony.—Filed 14th January, 1875.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs. } No. 369.
CHARLES CLINTON.

185 CHAS. WHITNEY recalled.

Q. What was the object and consideration of the transfer of

the unfinished road from Brashier to Opelousas, by Charles Morgan, to the New Orleans, Mobile & Texas Railroad Co.?

(Objection of intervenors reserved.)

A. I was present at the interviews between Mr. Morgan and the committee of the company, immediately preceding the execution of the contract. The expressed object on the part of the committee was to gain Mr. Morgan's identification with them in the construction of the road to the city of Houston, for the purpose of getting rid of the complication which existed between N. O. and Mobile, and that was likely to ensue between them in the business to Houston; and other object was to procure the aid which his subscription would give them in building the road, in connection with other subscriptions alleged by them to be made by other parties. Nothing was said about the connection with Shreveport. The whole conversation centered upon the extension of the road to Houston. At the time, Mr. Morgan was running boats to Mobile. The complication was very vivid, and both parties were losing money. If the railroad company had completed their road to Houston without Mr. Morgan's co-operation as a stockholder, there would
186 have been a similar complication towards that point—Houston. Mr. Morgan owns steamers running to Galveston. Freight was then taken to Houston by water and rail. Mr. Morgan was not running any boats to Shreveport by way of Red River.

Q. This agreement was made about 16th December, 1871. If it had been carried out successively by both parties, would it not have been beneficial to the stockholders of the company?

A. I think so, by completing the road to Houston and removing complication.

Agreement.—Offered by intervenors 9th January, '75, & filed 14th January, 1875.

Certified copy of agreement, the New Orleans, Mobile & Chattanooga Railroad Company with the State of Louisiana under act of the general assembly of said State, approved April 20th, 1871.

Resolved, That the act of the general assembly of the State of Louisiana entitled "An act to relieve the State from its obligation to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company under an act of the general assembly
187 approved February 21st, 1870, by the subscription on the part of the State to the capital stock of said corporation, and to regulate the conditions of such subscription, and to secure the construction of the road of said corporation from Vermillionville to Shreveport," together with all the conditions and provisions thereof, be, and the same is hereby, accepted; that the secretary of this company be, and he hereby is, authorized and directed to execute, under the corporate seal of the company, and to deliver to the secretary of state for the State of Louisiana, an instrument in writing that shall be a full release and acquittance from this company to the State of Louisiana of the obligation of said State to endorse or guarantee the second-mortgage bonds of this company under the fourth section of the act of the general assembly of said State, approved February 21st, 1870; and that the secretary of this company be, and he is hereby, authorized and directed to execute, under the corporate seal of the company, and deliver to the secretary of state for the State of Louisiana, in compliance with the provisions of the act by this resolution accepted, an agreement that shall

provide for the commencement by this company of the work of constructing the line of road from Vermillionville to Shreveport within six months, and the completion of said line of road within the time
188 limited in said act; and that the secretary be, and he is hereby, further authorized and directed to issue to the State of Louisiana upon the subscription to be made to the capital stock of this company by the governor of said State, in accordance with the provisions of the act of the general assembly accepted by this resolution, twenty-five thousand shares of one hundred dollars each, of the capital stock of this company, and to deliver said stock to the governor of said State as and when payment shall be made therefor, in accordance with the terms of said act.

I, John J. Howell, secretary of the New Orleans, Mobile and Chattanooga Railroad Company, do hereby certify that the foregoing is a correct copy of a resolution adopted by the board of directors of said company.

In witness whereof I have hereunto subscribed my name officially and affixed the corporate seal of said company this 8th day of April, A. D. 1871.

[SEAL.] (Signed) JNO. J. HOWELL,
Secretary.

An agreement made the 22d day of April, one thousand eight hundred and seventy-one, between the New Orleans, Mobile and Chattanooga Railroad Company, of the first part, and the State of Louisiana, of the second part.

189 Whereas, by a certain act of the general assembly of the State of Louisiana, approved April 20th, 1871, entitled "An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company," under an act of the general assembly, approved February 21st, 1870, by subscription on the part of the State to the capital stock of said corporation, and to regulate the conditions of such subscription, and to secure the construction of the road of said corporation from Vermillionville to Shreveport, provision was made for the subscription by the governor of the State of Louisiana, on behalf of said State, for twenty-five thousand shares, of one hundred dollars each, of the capital stock of the said New Orleans, Mobile and Chattanooga Railroad Company, and for payment of such subscription in the bonds of the State of Louisiana as in said act prescribed; and it was by said act further provided and declared, that such subscription for stock and issue of bonds therefor were intended to extinguish the obligation of the State of Louisiana to endorse or guarantee the second-mortgage bonds of said corporation, under the said act of the general assembly relative to said corporation, approved February 21st, 1870, and as a discharge of either party from all
190 obligations for the issue and endorsement, guaranty and security, of said mortgage-bonds, as provided in the fourth section of said act; and that said corporation should be required, at or before the complete issue of said bonds, to file with the secretary of state of Louisiana a full release and acquittance of the obligations of the State so created, to guarantee said mortgage-bonds, and for which the provisions of said act are designed as a substitute and discharge, and that the said corporation should, by its express agreement, made and entered into by the vote of its board of directors and attested by its seal and the signa-

ture of its secretary, obligate itself to commence that part of its railroad from Vermillionville to Shreveport within six months, and to complete the same within the time limited therefor in the said act of the general assembly; provided, that the said corporation may purchase from the State of Louisiana the said shares of stock, at their par value, at any time prior to the maturity of the bonds issued therefor, and may pay for the same in lawful money or in any of the bonds of the said State at their par value.

Now, this instrument, which is made and entered into by the said The New Orleans, Mobile and Chattanooga Railroad Company, by and
191 in pursuance of the vote of its board of directors, witnesseth: That the said The New Orleans, Mobile and Chattanooga Railroad Company hath accepted, and doth hereby accept, all and singular the first above-mentioned act of the general assembly of the State of Louisiana, and in consideration of such act and of the subscription made thereunder by the governor of the State of Louisiana, on behalf of the said State, for such twenty-five thousand shares of one hundred dollars each, of the capital stock of said corporation, and of the payment made or to be made, of such subscription in bonds of the State as prescribed by the said act, the said New Orleans, Mobile and Chattanooga Railroad Company doth hereby fully release, acquit, and discharge the State of Louisiana of and from the obligation of said State, so created by the said act of February 21st, 1870, to gau'ntee said second-mortgage bonds as prescribed in or by virtue of the fourth section of said act, and for which the provisions of the said subsequent act providing for such subscription by the State for two millions five hundred thousand dollars of the stock of said company, are designed as a substitute and discharge; and further, for the considerations aforesaid, and in pursuance
192 of and conformity with the provisions in that behalf, the said first above-mentioned act of the general assembly of the State of Louisiana, the said The New Orleans, Mobile and Chattanooga Railroad Company by this express agreement, made and entered into by the vote of its board of directors, and attested by its seal and the signature of its secretary, doth hereby obligates itself and binds itself to the State of Louisiana, to commence that part of its railroad, from Vermillionville to Shreveport, within six months, and to complete the same within the time limited therefor in the act of the general assembly, which is in that behalf referred to in the said first above-mentioned act.

In witness whereof the said The New Orleans, Mobile and Chattanooga Railroad Company, in pursuance of a resolution of its board of directors hath to this instrument, which is designed to be filed with the secretary of state of the State of Louisiana, affixed its corporate seal, and caused the same to be attested by the signature of its secretary, on the day and year first above written.

The New Orleans, Mobile and Chattanooga Railroad Company,
[SEAL.] (Signed) By JNO. J. HOWELL, *Secretary.*

193 OFFICE OF SECRETARY OF STATE,
New Orleans, January 11th, 1875.

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in this office.

Given under my hand and the seal of the State this 11th day of January, A. D, 1875, and of the Independence of the United States the 99th.

[SEAL OF STATE.] (Signed) P. G. DESLONDE,
Secretary of State.

Original endorsed: Filed in the office of the sec'y of state, April 22d, 1871. Geo. E. Bovee, sec'y of state, Louisiana. Entered on record-book, page 401.

Order & continuance.—Minutes 14th January, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON ET AL. } No. 369.

This case, assigned for this day for argument, came on.

Henry C. Dibble, J. B. Cotton, and J. Q. A. Fellows representing the State of Louisiana.

Kennard, Howe & Prentiss for Williams & Guion, intervenors; Jno. A. Campbell for the New Orleans, Mobile & Texas Railroad Co., intervenors.

After hearing argument of counsel, the same was ordered to be continued to the 15th inst. for further argument.

194 *Order: cause submitted.—Minutes 15th January*, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, &C., ET AL. } No. 369.

This case, assigned for this day for argument, came on.

Henry C. Dibble, J. B. Cotton, and J. Q. A. Fellows representing the State of Louisiana.

Kennard, Howe & Prentiss for Williams & Guion, intervenors.

John A. Campbell for the N. O., Mobile & Texas Railroad Co., intervenor.

After hearing argument of counsel, the same was submitted to the court for adjudication.

Reasons for judgment.—Filed 23d January, 1875.

Superior district court.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR ET AL., THE NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY, AND WILLIAMS & GUION, INTERVENORS. } No. 369.

J. HAWKINS, *Judge.*

The litigation in this case springs out of a demand on the part of the Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, for the payment of the interest due and to become
195 due on $2,500,000 of the bonds of the State of Louisiana, dated April 24, 1871, and issued under the provisions of act No. 95 of 1871.

The grounds of refusal by the State and its public officers for not paying the interest on these bonds may be briefly stated under three heads:

1st. That the conditions prescribed by the act under which these bonds were issued had not been complied with at the date of their issue.

2nd. That they were not issued in conformity with the requirements of the statute, but were obtained through improper practices, without consideration to the State.

That as such they are a disguised donation and are therefore void.

3d. That their issue was in violation of the State's constitutional limitation of the public debt of $25,000,000, which was in force at the time of their issue.

By act No. 28, approved August 19th, 1868, the Mobile and Chattanooga Railroad Company obtained authority to exercise and enjoy its corporate powers in the State of Louisiana. Under this act the company obtained the right of way through the State of Louisiana to the Texas line, with all the privileges and rights to construct, own, and operate their road through and across the *the* State at the session
196 of the legislature of 1869, act No. 26, passed, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana."

Ss. I of this act provides that the State shall endorse the 2d-mortgage bonds of the company to the extent of $12,500 on each mile of the road completed in a westerly direction from the city of New Orleans, and within the State of Louisiana. Ss. 8 provides that when one continuous section of forty miles shall have been constructed by the company with the rails laid thereon, then it shall be lawful for the State to give its guarantee for the 2d-mortgage bonds as provided in ss. I of this act.

Ss. XII after providing what the company is required to do, in constructing the road to the Texas line, limits the time to three years, within which the entire road shall be completed through the State of Louisiana, under the penalty, in case of failure, that the State is discharged from her obligation to guarantee the 2nd-mortgage bonds.

On this point the evidence of Bailey, the engineer, Dodge, and other witnesses is conclusive.

The obligations imposed by this statute upon the company as a condition-precedent to their right to demand the guarantee of their
197 2nd-mortgage bonds had ceased prior to the passage of act No. 95 of 1871, because the first section of forty continuous miles of the main line of the road was not constructed within twelve months, and because the whole main line was not constructed within three years, as provided in ss. XII of the act approved February 12, 1869. It is clear enough that there was therefore no longer any obligation resting upon the State of Louisiana to guarantee the 2nd-mortgage bonds of the company, as stipulated by this act.

The act 95, approved April 12, 1871, entitled "An act to relieve the State from its obligation to guarantee the 2d mortgage bonds of the Mobile and Chattanooga Railroad Company," is therefore inoperative, because no such obligation was resting upon the State at the time.

The subscription by the State for 25,000 shares of stock of said company, authorized by section I of this act, was a nullity for two reasons: First, that there was no antecedent obligation resting upon the State; and 2nd, that the stock itself is not shown to possess any value whatever. The filing by the company of a release to the State of its prior obligation to guarantee its 2nd-mortgage bonds, had no legal effect, because the obligation had ceased before the passage of the act.

198 This brief recital of the legislation in reference to the Mobile and Chattanooga Railroad Company, brings us to the litigation now before the court. It is necessary, therefore, to consider first the nature and character of this suit as made by the pleadings. The position taken by railroad company and other bondsholders, that the suit is one

of the State against her officers by injunction to prohibit them from paying the interest on the bonds, is too narrow and falls far short of a correct understanding of the case. The only effect which the injunction had, or could have, was to prevent the auditor and treasurer from violating the law by paying money out of the public treasury on obligations that were void.

Nothing could be decided contradictory with the railroad company or other holders of these bonds, under the injunction granted in favor of the State. This issue could only be determined between the State and the parties themselves. This suit is therefore one in which the State holds the affirmative against the Mobile and Chattanooga Railroad Company, to annul and cancel these bonds.

The motion of the railroad company and other holders of these bonds to dissolve the injunction sued out by the State against the auditor and treasurer amounts to a traverse of the allegations in the petition
199 of the State that the bonds are void. It is apparent from a perusal of the statutes on this subject, and more particularly the statute No. 95 of 1871, that the State was contracting with this railroad company to construct a branch road from Vermillionville to Shreveport. Conceded that the legislature is the proper and the only authority competent to represent the State, or that can bind it in a contract to construct a public work such as a railroad, yet the legislature can only act in its legislative capacity in pursuance of the forms of legislation by enacting public statutes.

The agents or agencies prescribed by the act are not permitted to deviate from the conditions prescribed by the act in carrying into effect its provisions.

Ss. I of the act of 1871 provides, among other things, that the company obligated itself to commence the construction of the road within six months from the date of the acceptance by the company of the terms of the act, and file a release of the obligations of the State to guarantee the second-mortgage bonds. It appears that, in four days after this act became a law, to wit, on the 24th day of April, 1874, the governor and the secretary of state signed the whole issue of these bonds, $2,500
200 in number, for one thousand dollars each, with 8 per cent. coupons attached, payable semi-annually for forty years. The evidence of Bailey and other witnesses, shows that the work on the road was not commenced within six months, nor has it yet been commenced. The premeditated haste with which the governor issued all these bonds in favor of a defaulting company, without the first condition being complied with, and according to the letter of Mr. Raynor to the engineer, it never was their intention to ever commence the construction of the road, casts a cloud of suspicion over the good faith of the company from the very inception. This whole transaction in reference to the issue of these bonds furnishes a warning to the present and future executives and legislatures which should not be allowed to pass unnoticed.

Courts of justice, as guardians of the constitution and the rights of the people thereunder, can never sanction such loose, hasty, and inconsiderate action by either of the other departments of the Government.

As to the question raised by Williams and Guion, claiming to be innocent third holders of some of these bonds before maturity, and claiming an immunity on that account from the effect by the failure on the part of the first holders to comply with the condition of the statute, the
201 law is well settled, that in this class of obligations, there is no such party as third holders, so far as the maker of the bonds is concerned. (See Diamond vs. Lawrence County, 37 Pennsylvania State R.,

pa. 353; Starin vs. Town of Genoa, 23 N. Y., 440; The Floyd acceptances, 7 Wallace, page 666; Aspinwall et al. vs. Com. County of Davies, 22 Howard, N. S. R., 365.) Third holders of such bonds stand precisely on the same ground as the first holder or original payee.

Even if there was no constitutional limitation of the public debt of the State at the time these bonds were issued, still they, and every one of them, are null and void, because none of the condition' upon which their issue was authorized had or has yet been fulfilled.

But the legislature was not capacitative to authorize the issue of these or any bonds of the State at the date of the passage of act No. 95 of 1871, because the amendment to the constitution limiting the State debt was adopted in November, 1870, several months prior to the passage of act No. 95 of 1871. The limit of the State debt provided by the amendment to the constitution had been reached and exceeded prior to the passage of act No. 95 of 1871, authorizing the issue of these bonds. By this constitutional prohibition, the bonds were stricken with nullity at their birth.

202 It is therefore ordered, adjudged, and decreed that the injunction granted in this case be made perpetual.

It is further ordered and decreed that the series of bonds issued under act No. 95 of 1871, amounting to two and one-half millions of dollars, with the coupons attached, made payable to the New Orleans, Mobile and Texas Railroad Company or bearer, be declared null and void.

Judgment.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA *vs.* CHARLES CLINTON, AUDITOR OF PUBLIC ACCOUNTS, and Ant. Dubuclet, treasurer New Orleans, Mobile and Texas Railroad Co., and Williams and Guion, intervenors.	No. 369.

This case submitted to the court for adjudication and for the written reasons this day filed, the court considering the law and the evidence to be in favor of the plaintiff, the State of Louisiana, it is ordered, adjudged, and decreed, that the injunction herein issued be perpetuated, and that Charles Clinton, auditor of public accounts, and Antoine Dubuclet, State treasurer, be enjoined and restrained from issuing or paying, or receiving in payment any bonds, coupons, certificates, warrants,

203 or other writings, calling for the payment or credit of money in any way connected with or depending upon any of the items complained of or objected to in the petition.

It is further ordered and decreed, that the series of bonds issued under act No. 95 of 1871, amounting to two and one-half millions of dollars, with the coupons attached, made payable to the New Orleans, Mobile and Texas Railroad Company or bearer, be declared null and void, with costs

Judgment rendered January 23d, A. D. 1875.

Judgment signed February 2nd, A. D. 1875.

(Signed) JACOB HAWKINS, *Judge.*

of the State against her officers by injunction to prohibit them from paying the interest on the bonds, is too narrow and falls far short of a correct understanding of the case. The only effect which the injunction had, or could have, was to prevent the auditor and treasurer from violating the law by paying money out of the public treasury on obligations that were void.

Nothing could be decided contradictory with the railroad company or other holders of these bonds, under the injunction granted in favor of the State. This issue could only be determined between the State and the parties themselves. This suit is therefore one in which the State holds the affirmative against the Mobile and Chattanooga Railroad Company, to annul and cancel these bonds.

The motion of the railroad company and other holders of these bonds to dissolve the injunction sued out by the State against the auditor and treasurer amounts to a traverse of the allegations in the petition
199 of the State that the bonds are void. It is apparent from a perusal of the statutes on this subject, and more particularly the statute No. 95 of 1871, that the State was contracting with this railroad company to construct a branch road from Vermillionville to Shreveport. Conceded that the legislature is the proper and the only authority competent to represent the State, or that can bind it in a contract to construct a public work such as a railroad, yet the legislature can only act in its legislative capacity in pursuance of the forms of legislation by enacting public statutes.

The agents or agencies prescribed by the act are not permitted to deviate from the conditions prescribed by the act in carrying into effect its provisions.

Ss. I of the act of 1871 provides, among other things, that the company obligated itself to commence the construction of the road within six months from the date of the acceptance by the company of the terms of the act, and file a release of the obligations of the State to guarantee the second-mortgage bonds. It appears that, in four days after this act became a law, to wit, on the 24th day of April, 1874, the governor and the secretary of state signed the whole issue of these bonds, $2,500
200 in number, for one thousand dollars each, with 8 per cent. coupons attached, payable semi-annually for forty years. The evidence of Bailey and other witnesses, shows that the work on the road was not commenced within six months, nor has it yet been commenced. The premeditated haste with which the governor issued all these bonds in favor of a defaulting company, without the first condition being complied with, and according to the letter of Mr. Raynor to the engineer, it never was their intention to ever commence the construction of the road, casts a cloud of suspicion over the good faith of the company from the very inception. This whole transaction in reference to the issue of these bonds furnishes a warning to the present and future executives and legislatures which should not be allowed to pass unnoticed.

Courts of justice, as guardians of the constitution and the rights of the people thereunder, can never sanction such loose, hasty, and inconsiderate action by either of the other departments of the Government.

As to the question raised by Williams and Guion, claiming to be innocent third holders of some of these bonds before maturity, and claiming an immunity on that account from the effect by the failure on the part of the first holders to comply with the condition of the statute, the
201 law is well settled, that in this class of obligations, there is no such party as third holders, so far as the maker of the bonds is concerned. (See Diamond vs. Lawrence County, 37 Pennsylvania State R.,

pa. 353; Starin vs. Town of Genoa, 23 N. Y., 440; The Floyd acceptances, 7 Wallace, page 666; Aspinwall et al. vs. Com. County of Davies, 22 Howard, N. S. R., 365.) Third holders of such bonds stand precisely on the same ground as the first holder or original payee.

Even if there was no constitutional limitation of the public debt of the State at the time these bonds were issued, still they, and every one of them, are null and void, because none of the condition' upon which their issue was authorized had or has yet been fulfilled.

But the legislature was not capacitative to authorize the issue of these or any bonds of the State at the date of the passage of act No. 95 of 1871, because the amendment to the constitution limiting the State debt was adopted in November, 1870, several months prior to the passage of act No. 95 of 1871. The limit of the State debt provided by the amendment to the constitution had been reached and exceeded prior to the passage of act No. 95 of 1871, authorizing the issue of these bonds. By this constitutional prohibition, the bonds were stricken with nullity at their birth.

202 It is therefore ordered, adjudged, and decreed that the injunction granted in this case be made perpetual.

It is further ordered and decreed that the series of bonds issued under act No. 95 of 1871, amounting to two and one-half millions of dollars, with the coupons attached, made payable to the New Orleans, Mobile and Texas Railroad Company or bearer, be declared null and void.

Judgment.

State of Louisiana, superior district court for the parish of Orleans.

STATE OF LOUISIANA *vs.* CHARLES CLINTON, AUDITOR OF PUBLIC ACCOUNTS, and Ant. Dubuclet, treasurer New Orleans, Mobile and Texas Railroad Co., and Williams and Guion, intervenors.	No. 369.

This case submitted to the court for adjudication and for the written reasons this day filed, the court considering the law and the evidence to be in favor of the plaintiff, the State of Louisiana, it is ordered, adjudged, and decreed, that the injunction herein issued be perpetuated, and that Charles Clinton, auditor of public accounts, and Antoine Dubuclet, State treasurer, be enjoined and restrained from issuing or paying, or receiving in payment any bonds, coupons, certificates, warrants,

203 or other writings, calling for the payment or credit of money in any way connected with or depending upon any of the items complained of or objected to in the petition.

It is further ordered and decreed, that the series of bonds issued under act No. 95 of 1871, amounting to two and one-half millions of dollars, with the coupons attached, made payable to the New Orleans, Mobile and Texas Railroad Company or bearer, be declared null and void, with costs

Judgment rendered January 23d, A. D. 1875.

Judgment signed February 2nd, A. D. 1875.

(Signed) JACOB HAWKINS, *Judge.*

Bill of exceptions of N. O., M. & T. R. R. Co.—Filed 9th January, 1875.

Superior district court.

(This should be at page 121.)

STATE OF LOUISIANA
vs.
CHARLES CLINTON, THE N. O., M. & T. R. R. Co. } No. 369.

Bill of exceptions of intervenor, the R. R. Co.

Be it remembered, that on the trial of this cause, the plaintiff offered G. W. R. Bailey as a witness, and offered to show that the intervenor, the said railroad company did not commence that part of its railroad from Vermillionville to Shreveport, within 6 months from the date of the act 95 of 1871, say by October 20, 1871; to all of which testi-
204 mony the said intervenor then and there objected, for the following reasons:

1st. That by the act No. 95 of 1871 itself, the beginning of the work was not a condition-precedent to the issue of the bonds; but on the contrary, the bonds were to be issued and were issued in exchange for an equal amount of stock in the company prior to the beginning of the work, and also prior to the making and filing of the personal agreement to begin the work at a special time.

2. That on the face of the law itself, No. 95 of 1871, it was not prescribed that the work should be begun, under pain of any nullity within a certain time, but that an agreement of the company to so begin the work, with certain waivers and acquittances, should be filed; as violation of which agreement, there being no penalty or nullity denounced, could only give rise to an action of damages, and could in no wise affect the obligation of the bonds.

3. That the State has always retained and still holds the stock exchanged for said bonds, which stock and said waivers & acquittances were the consideration of the bonds.

4. That the cause was not remanded by the Supreme Court for the purpose of this enquiry, but for a different and specific purpose.

205 But the court overruled the objections and admitted the testimony, to which ruling the intervenor then & there duly excepted.

The testimony was admitted on the ground that the objection went to the effect of the testimony.

(Signed) JACOB HAWKINS, *Judge.*

Motion & grounds for new trial by intervenors, Williams & Guion.—Filed 27th January, 1875.

Superior district court.

STATE, &C.,
vs.
CHARLES CLINTON, WILLIAMS & GUION, INTERV'N'RS. } No. 369.

On motion of Kennard, Howe & Prentiss, attorneys for Williams & Guion, intervenors, it is ordered that plaintiff show cause on Tuesday, the 2nd day of February, 1875, at 11 a. m., why a new trial should not

be granted herein of said intervention, for the reasons that the judgment rendered herein on the 23d of January, 1875, is contrary to the law and the evidence, in this:

First. That the chief reason given for same, viz, that forty miles of the track of the New Orleans, Mobile and Texas R. R. were not completed within a certain time, is not set up in the pleadings herein, and neither the defendants nor the intervenors have been tendered or
206 advised of any such issue.

Second. That the statement in the written reasons for said judgment that the obligation imposed on the plaintiff to endorse second-mortgage bonds of the Shreveport branch of the railroad company had lapsed on April 20th, 1871, is erroneous on the face of the act 95 of 1871, and act 31 of 1870, and act 26 of 1869.

Third. That it is a matter of public history of the State, and appears by official reports of plaintiff in this case *in this case*, that bonds of the railroad company, 60 miles, have been endorsed by the State under said act 26 of 1869, and the State has accepted a mortgage therefor, and claimed the benefit thereof in the case of Ames, trustee, vs. The Railroad Company et als., U. S. circuit court, No. 7073.

Fourth. That the statement in the said written reasons for judgment that the stock of the company, 25,000 shares, issued to the State in exchange for the bonds under act 95 of 1871, was worthless, is erroneous, it appearing by the statutes and the evidence that it was stock in a road which had then cost at least 8,000,000, and there being no evidence whatever of its worthlessness.

Fifth. That the statement in the said written reasons for judg-
207 ment that the Shreveport branch was not begun in time and never begun at all is erroneous.

Sixth. That the statement in said written reasons that the action of the governor of the State in issuing the bonds in exchange for an equal amount of stock before work was begun was illegal, is erroneous on the face of the statute itself.

Seventh. That the statement in said reasons that it was legally impossible for Williams & Guion to be bona-fide holders of the obligations in question is erroneous.

Eight'. That the statement in said written reasons that the bonds in question were issued in excess of the constitutional limitation of the State debt, adopted November, 1870, is erroneous, as matter of fact and law.

Ninth. That the intervenors, Williams & Guion, are protected in the premises by the provision of the Constitution of the United States forbidding a State to impair the obligation of its own contract, and by the decisions of the Supreme Court of the United States in reference to the bona-fide owners of bonds.

Order: rule of Williams & Guion for n. trial.—Minutes, 27th January, 1875.

STATE, &C.
vs.
CHARLES CLINTON, WILLIAMS & GUION, interv'ors. } No. 369.

208 On motion of Kennard, Howe & Prentiss, attorneys for Williams & Guion, intervenors, it is ordered that plaintiff show cause on Tuesday, the 2nd day of February, 1875, at 11 a. m., why a new trial

should not be granted herein of said intervention, for the reasons that the judgment rendered herein on the 23d of January, 1875, is contrary to the law & the evidence, and for the reasons on file.

Sheriff's return on copy of rule.—Filed 1st February, 1875.

Received Jan. 27th, 1875, and on the 30th day, same month and year, I served a true copy of the within rule on the State of Louisiana, through A. P. Field, attorney-general, in person.

Returned same day. Sh'ff's fees, 50 cts.

(Signed) S. W. SCOTT, *D'y Sh'ff.*

Concurrence for new trial by the N. O., Mobile & Texas R. R. Co., intervenor.—Filed 29th January, 1875.

Superior district court, parish of Orleans.

STATE OF LOUISIANA
vs.
CLINTON, AUDITOR, ET AL. } No. 369.

The New Orleans, Mobile & Texas Railroad Company concurs in the motion filed for a new trial in this cause, upon all the grounds
209 stated by their co-defendants, except that which relators to the ownership of the bonds & their claim as a holder thereof.

This intervenor objects to any other judgment in this cause than that of the dismissal of the intervention, as not supported by any testimony, and because the intervenor has not been willing to prosecute the same.

(Signed) J. A. CAMPBELL,
For the Deft.

Note of evidence on rule for n. trial.—Filed 2nd February, 1875.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR OF PUBLIC ACcounts, Williams & Guion, intervenors. } No. 369.

On motion for new trial, counsel for plaintiff in rule offer in evidence the bill in equity in case 7073, marked "A."

Also the answer of W. P. Kellogg, marked "B."

Also the decree with Semmes & Mott's endorsement on it, marked "C."

Also the petition filed August 31st, 1874, with the advertisement of the governor annexed, marked "D."

Also the restraining order of August 31st, 1871, marked "E."
210 Also the decretal order of the 28th September, 1874, marked "F."

The judge refuses to admit this as testimony, but permits the counsel for intervenors to refer to it so far as it constitutes the public history of the State.

Counsel for intervenors reserves a bill of exceptions to the ruling of the court.

Order dismissing rule for n. trial.—Minutes 2nd February, 1875.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR OF PUBLIC ACCOUNTS, & Ant. Dubuclet, State treasurer, N. O., Mobile & Texas R. R. Co., and Williams & Guion, intervenors. } No. 369.

The rule herein assigned for this day came on.
Kennard Howe & Prentiss for plaintiff in rule.
J. B. Cotton and J. Q. A. Fellows for defendant in rule.
After hearing argument of counsel, and for the reasons orally assigned by the court, the court considering the law to be in favor of defendant in rule, it is ordered that the rule for a new trial be dismissed.

211 *Motion for appeal by Williams & Guion.—Filed & entered 16th March, 1875.*

Superior district court, parish of Orleans.

THE STATE, &C.,
vs.
CHARLES CLINTON ET ALS., WILLIAMS & Guion, intervenors. } No. 369.

On motion in open court of Kennard, Howe & Prentiss, attorneys for Williams & Guion, intervenors herein, and on suggesting errors to the prejudice of the intervenors in the judgment rendered herein on the 23d day of January, 1875, and signed on the 2nd day of February, 1875, it is ordered that a devolutive appeal be granted to the said intervenors, returnable to the supreme court of Louisiana on the third Monday of April, 1875, there not being time to prepare transcript of appeal prior to that time, on said intervenors giving bond in $250, conditioned as the law directs.

Appeal-bond.—Filed March 17th, 1875.

Know all men by these presents that we, Williams & Guion, as principals, and Thomas H. Hunt, of New Orleans, as surety, are held and firmly bound unto John Burke, clerk of the superior district
212 court for the parish of Orleans, his successors, executors, administrators, and assigns in the sum of two hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated in the city of New Orleans, on this 16th day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above-bounden Williams & Guion have this day filed a motion of appeal from a final judgment rendered against them in the suit of State, &c., vs. Charles Clinton et als., Williams & Guion, intervenors, No. 369 in the superior district court for the parish of Orleans, on the 23d day of January, 1875, and signed on the 2d day of February, 1875.

Now, the condition of the above obligation is such that the above-bounden Williams & Guion shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same

shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Thomas H. Hunt shall be liable in their place.

(Signed) WILLIAMS & GUION,
By KENNARD, HOWE & PRENTISS, *Attys.* [L. S.]
(Signed) THOS. H. HUNT. [L. S.]

Signed, sealed, & delivered in the presence of—
(Signed) W. W. HOWE.

213 *Bill of exceptions of Williams & Guion.—Filed 20th March*, 1875.

Superior district court.

THE STATE, &C., *vs.* CHARLES CLINTON, AUDITOR. } No. 369.

Bill of exceptions of Williams & Guion, intervenors.

Be it remembered that on the trial of the motion for a new trial in this case, on the 2d February, 1875, the movers, Williams & Guion, offered in proof of the averments of the said motion the documents hereto annexed, marked from A to F, inclusive.

The State, as plaintiff, objected to the same as irrelevant. The court refused to admit the same as evidence, but permitted counsel for said intervenors to refer to the same as part of the public history of the day.

To which refusal the counsel for said intervenors then and there excepted.

(Signed) JACOB HAWKINS, *Judge.*

DOCUMENT' A TO F ANNEXED.

Document A.—Bill of complaint.

UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

214 Frank M. Ames, a citizen of the State of Massachusetts, residing at Canton, brings this his bill of complaint as plaintiff against the New Orleans, Mobile and Texas Railroad Company, a corporation created by the State of Alabama, and recognized as a corporation and with authority to have a domicil in the State of Louisiana, and to carry on their business and to exercise their corporate powers and faculties in the State of Louisiana; the New Orleans and Texas Railroad Company, a corporation created under the statutes of the State of Louisiana, and having its domicil in the city of New Orleans, in that State; and William Pitt Kellogg, who is a citizen of the State of Louisiana, and a resident of the city of New Orleans, *of Louisiana, and a resident of the city of New Orleans*, as defendant to the same.

And thereupon your orator complains and says:

Article first. That the New Orleans, Mobile and Chattanooga Railroad Company was incorporated by the general assembly of the State

of Alabama the 24th day of November, A. D. 1866, with full corporate powers to locate, construct, maintain, and hold as property to conduct business therewith, a line or lines of railroad through that State from the city of Chattanooga, in the State of Tennessee, to the city of Mobile, and thence to the city of New Orleans, and thence through
215 the State of Louisiana to the city of Houston and to the western boundary of the State of Texas; and to accomplish this object, powers were granted by the States of Tennessee, Alabama, Mississippi, Louisiana, and Texas to the said corporation, with the capacity to sue and be sued in the said several States, and to make the contracts necessary for all the ends of said corporation; and among other specific powers, the power was given to borrow money by the issues of bonds bearing interest not to exceed eight per cent. per annum, and to secure the same by a mortgage of their railroads and parts of railroads, branch lines, connecting lines, real and personal property, and the corporate franchises and powers of the said corporation.

Article second. Your orator further complains and says that the said New Orleans, Mobile and Chattanooga Railroad Company, during the years 1868, 1869, 1870, and 1870, did locate, survey, and partially construct the line of railroad from the State of Alabama, and within that State, to the city of New Orleans, and did survey, locate, and partially construct the section of the said railroad from the west bank of the Mississippi River, near New Orleans, to Bayou La Fourche, near Don-
216 aldsonville, in Louisiana, and westwardly towards the Sabine River and the city of Houston aforesaid, and did receive from the State of Louisiana in the legislative acts passed relative to the said corporation, and to expedite the construction of the railroads in Louisiana, did confer upon the said corporation powers and privileges, and granted State aid by the indorsement and guarantee of a portion of their bonds and a State bounty, to be paid in bonds, upon the completion of certain sections of the said line of railroad in the States of Louisiana and Texas, all of which will more particularly appear from the statutes approved on the 12th day of August 1868, 12th February, 1869, 21st February, 1870.

Article third. Your orator further complains and says that the New Orleans, Mobile and Chattanooga Railroad Company, on the 15th day of March, A. D. 1870, did prepare for issue its corporate bonds, called first-mortgage bonds, to an amount not to exceed twelve thousand five hundred dollars per mile (exclusive of side tracks) in that part of the State of Louisiana lying west of the Mississippi River and twenty-five thousand dollars per mile (exclusive of side tracks) of all roads constructed and to be constructed in the State of Texas, which bonds were to be negotiated and the money to be employed for the construction and
217 equipment of the said railroads, and that the payment of the said bonds was to be secured by a mortgage to Oakes Ames and Erwin D. Morgan, as trustees for the holders thereof; the mortgage, which was to be a first lien to the extent, and so limited, upon all the railroads constructed and to be constructed by the said company in that part of the State of Louisiana lying west of the Mississippi River, and in the State of Texas upon all of the real and personal property and franchises appurtenant thereto; and the president and directors of said corporation did cause bonds to be made of a uniform series of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, of the first days of January and July of each year, and the principal to be paid on the first day of January, A. D. 1915, and to become due and payable at any time after a

of Counsel.

default in the payment of the interest and the continuance of that default for six months thereafter.

And your orator further complains and says that on the 15th day of March, A. D. 1870, the said corporation did execute the bonds and deed of trust aforesaid pursuant to the powers granted in the act of incorporation and the resolution of the said company, whereby the said corporation did grant, bargain, sell, and convey to Oakes Ames and
218 Edwin D. Morgan, their successor' and assigns, any and all of the railroads of the said corporation constructed or to be constructed in that part of the State of Louisiana west of the Mississippi River and in the State of Texas, consituting parts, portions, or sections of its main or branch lines of railroads on the general route prescribed in its charter and amendments thereto, or as authorized or to be authorized by the laws of the said States of Louisiana and Texas, or of either of them, whether now owned or to be thereafter constructed or acquired by the said corporation, including the rights of way and all other rights, interests, or estate of the corporation in and to the lands occupied by said railroad and railroads, or to be owned, acquired, or occupied for that purpose, or for constructing, repairing, and operating, or doing the business of the said railroad or railroads, and every part thereof, together with all the improvements, erections, structures, buildings, offices, supplies, equipments, materials, stores, fuel, vessels, ships, steamboats, engines, furniture, appertaining to the same, and all the personal property connected therewith, with the privilege, rights, franchises, corporate or otherwise, to construct, maintain, operate, and manage said railroads, and every part thereof or connected therewith, or relating to the same, for the construction, use, and manage-
219 ment of the same, whether derived from the State of Alabama or from grants of other States, or from the United States of America, or from any counties, towns, cities, corporations, or from any person or persons, with the right to receive the tolls, incomes, issues, rents, from the said railroad and branches, with all the tenements, hereditaments, and appurtenances, upon the trusts and conditions expressed in the said deed: that the deed should be in operation if the principal and interest specified in the said bonds should all be paid according to the tenor and effect of the same, and that the corporation should remain in possession and control of the property until there should be a default of payment.

That upon the happening of a default in the payment of the interest on the said bonds, and the continuance of that default for the period of six months, that the principal should become due, and that the said trustees might thereupon enter upon and hold all of the property so conveyed, and proceed to sell the same for the purpose of paying the debt and interest aforesaid; and until the period of sale, they should "have, hold, use, operate, and manage, by their superintendents, managers, officers, agents, attorneys, *and* all the portions, sections, and each and every part of the same, and conduct the business thereof, and exercise the franchises pertaining thereto, and make from time to time
220 all necessary repairs and replacements and all such necessary and useful alterations, additions, and improvements thereto as may seem to be judicious, and to collect and receive all tolls, freights, incomes, rents, issues, and profits from the same; all of which will more fully and at large appear by the copy of the original deed, which is hereunto annexed as 'Exhibit A,' received from the said corporation, and which your orator craves may be taken as a part of this bill, and to which reference is hereby made."

Article fourth. Your orator further complains and says that in the year 1871 the name of the said corporation was changed by legislative acts to the New Orleans, Mobile and Texas Railroad Company, and by that name since the month of May, 1871, it has been described in commercial and civil transactions, and upon the first day of January, A. D. 1872, the said corporation, under the name last aforesaid, did provide for the recognition of the mortgage or deed of trust hereinbefore described, and an exact copy whereof is contained in the Exhibit A; and the said corporation did provide in the said last-mentioned deed for a limitation of the issues of bonds corresponding to the limits of the deed described, and to the application of further issues to certain railroads therein mentioned.

221 Which deed of the New Orleans, Mobile, and Texas Railroad Company was executed to the said Oakes Ames and Edwin D. Morgan, their successors and assigns, as trustees, and a copy of the same as executed is filed herewith as Exhibit B, as a part of this bill, and to have reference thereto as showing the terms and conditions of the said debt and the trust to secure the same.

Article fifth. Your orator further complains and says that the said Oakes Ames departed this life in the month of May, A. D. 1873; and that Edwin D. Morgan has heretofore resigned his position as such trustee; and under the sixth article of the deed of trust, marked "Exhibit A," your orator and one Samuel L. Post, jr., a citizen of the State of New York, residing at Harlem, were appointed, by a writing of the corporation trustees, in the stead of the said Oakes Ames and E. D. Morgan, and have accepted the office of trustees under the deeds of trust, copies of which have been filed with this bill. And your orator further complains and says that the said Samuel L. Post, jr., has also resigned and ceased to act for and in the said trusteeship, and that your orator is the continuing and sole acting trustee at the present time, and that no other trustee has as yet been appointed in his place as provided for in the said deeds of trust or otherwise, and that by the sixth sec-

222 tion of that deed the rights, powers, and estates, thereby conferred are vested fully in him, your orator, as such continuing and acting trustee. And the said trustee, the plaintiff in this bill, further complains and says that there has been issued by the said corporation all of the bonds provided for by the said deeds, and that the same are now held by a great number of parties, to the number of seven thousand two hundred and fifty bonds, amounting to the sum of seven million two hundred and fifty thousand dollars in the aggregate; that on the first day of January, A. D. 1873, there was a default in the payment of the coupons due on that day, upon the presentment of the same for payment according to the tenor and effect of the bonds and coupon-warrants, by a refusal of payment thereof, which default has continued from that time till the time of filing of this bill, and that in addition to this default there was one similar in all respects on the first day of July last past, or that there is due *for* the said corporation the two instalments of interest payable in the year 1873 upon the entire issue of bonds, and that the principal has become due and exigible. And because of this default and under the covenants and powers contained in articles first and second of the deed contained in the Exhibit A, your orator did, on this present month of November, A. D. 1873, enter

223 upon and take possession of all of the railroad and railroads, rights, estates, interests, (corporeal and incorporeal,) property, franchises, faculties, privileges, and whatever else is granted to the trustees in the two deeds hereinbefore described, and the times whereof are in

the Exhibits A and B, and are using, employing, and controlling the said railroads, estates, and property under the directions of the said deeds, the same being prior and permanent to all of the claims upon the subjects of property thus conveyed.

Article sixth. Your orator further complains and says that the property described in the deeds of trust aforesaid is not sufficient to pay the amount of the incumbrance upon the same, nor the amount of the debt secured by the deeds of trust hereinbefore set forth and described.

That on the 8th day of March, A. D. 1869, the said New Orleans, Mobile and Chattanooga Railroad Company made an issue of second-mortgage bonds, of a uniform series of one thousand dollars each, with semi-annual coupon-warrants for interest of forty dollars each, payable on the first day of April and October of each year during the term of the bonds, and amounting in the whole to four thousand bonds, and to the sum of four million of dollars, secured by a deed of trust
224 upon the entire property of the said corporation and all of the franchises and rights, corporate and otherwise, and specially reserving the precedence and priority of the deeds set forth herein as Exhibits A and B; *im* that Henry J. Gardner and Peter Butler were appointed as the trustees; that there was a default in the payment of the interest and debt described in the bonds and mortgage, and the said Garner and Butler, as trustees, took possession of the property, rights, estates, interests, and brought a suit in this honorable court to have the property sold, in which the said New Orleans, Mobile and Texas Railroad Company was the defendant, and such proceedings were had in the said suit that the same was finally decided at the April sessions of the said court in April, A. D., 1873, and under the decree the entire property, rights, immunities, and privileges of said company were sold the 6th day of June, 1873, and under the confirmatory orders and directions of the court deeds were made to the said Gardner and Butler, the trustees, on the 14th day of June, 1873, whereby the said corporation was divested of its corporate franchises, property, effects, railroads, bonds, tenements, and hereditaments, subject to the encumbrance previously existing; and thereupon the bondholders for whom the said purchases were made organized a corporation under the name of the New Orleans, Mobile and Texas Railroad Company, and
225 did receive from the said Gardner and Butler a conveyance of the entirety of the railroads, property, rights, estates, franchises, faculties, and corporate name and existence so conveyed, and have elected, a president and directors, and had full possession of the property aforesaid so purchased by the said Gardner and Butler, consisting of the property to the east of the Mississippi River, as well as the property on the west side of the said river.

And your orator further complains and says that this corporation, as the successor of the New Orleans, Mobile and Chattanooga Railroad Company, and of the New Orleans, Mobile and Texas Railroad Company, as organized under the acts of the legislature of the States aforesaid, was invested with all of the property, rights, estates, franchises, interests, and whatever else is contained in the deeds of trust, marked "Exhibits A and B" to this bill, but is subject to the conditions and agreement therein and in subordination thereto. And the said corporation has come under some obligation to the New Orleans and Texas Railroad, a corporation formed under the statutes of Louisiana for the organization of corporations for works of public improvements and utility, to transfer their interest to the said company, and thereby the said company has an interest in the property west of the Mississippi River, in the States of Louisiana and Texas.

226 And your orator further says that the said New Orleans and Texas Railroad Company is the owner and holder of bonds forming a portion of the issues under the deeds Exhibits A and B to the sum of five thousand and more of said bonds, and represents the largest interests under the said deeds.

Article seventh. Your orator further complains and says that by the act of the general assembly of the State of Louisiana, approved the 17th day of February, 1869, and entitled "An act to expedite the construction of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana," a provision was made in the said act for an issue of the bonds of the said corporation for the sum of twelve thousand five hundred dollars per mile upon each completed mile of the main line of railroad west of the Mississippi River in that State upon which there should be an endorsement by the State, as set forth in the said act, and that these bonds should be secured by a mortgage in favor of the governor of the State to secure the holders of the bonds thus issued and guaranteed, which should be subordinate to the mortgage of said corporation to secure an issue of first-mortgage bonds to the amount of twelve thousand five hundred dollars per mile; and accordingly,

227 on the first day of July, 1870, a general mortgage was made by the said corporation to the governor of Louisiana for the security of the principal and interest of a uniform series of second-mortgage bonds, to be issued conformably to the terms of the acts of the legislature of Louisiana, each for one thousand dollars, with interest-coupons for forty dollars each for semi-annual interest, payable on the 1st days of January and July of every year, and which mortgage contains a conveyance of the property described in the Exhibits A & B to the State of Louisiana when the whole line shall be completed.

A copy of which mortgage to the governor of the State is herewith annexed and marked "Exhibit C."

Your orator further complains and says that in the year 1871 there had been completed from a point on the west bank of the Mississippi River opposite New Orleans to a point west of the town of Donaldsonville, on the Bayou La Fourche, in the parish of Ascension, and that there was an issue of bonds with the guarantee of the State thereon for the sum of dollars, and which amount of bonds are in circulation and are held by different persons whose names are not known to your orator.

Your orator further complains and says that there has been a default in the payment of the principal and interest of the said bonds since the 1st day of January last; that the said corporation does not

228 claim any right to demand any additional guarantee of bonds, and the bonds now outstanding are all that have been issued or will be required.

Your orator further complains and says that the corporation is entitled to receive a bonus or subsidy under the section of the act of the general assembly of the State Louisiana approved the 21st of February, 1870, relative to the New Orleans, Mobile and Chattanooga Railway Company, for the sum of seven hundred & fifty thousand dollars of the bonds of the State, upon the completion of the section of the road to Vermillionville, in the parish of Lafayette. Your orator further shows that the preparations for the completion of that section have been made, and that not a great deal remains to be done, except to purchase the iron and to lay it upon the tracks. That the labor of doing this could be completed before the termination of this suit, and that in the condition in which the road is and outlay of this kind will improve the se-

curity of any holder of the bonds of the corporation. Your orator would further say that on the section of the road between the La Fourche and Vermillionville is the Grand River, which is an important link of communication, and which is not more than fifteen miles from the ter-
229 minus of the completed line of the main line of the road. It is competent for your orator, under the deeds of trust aforesaid, for him to make additions, improvements, and alterations; but in the exercise of a trust which looks to the sale of the property *they* [he is] *are* not willing to act without the sanction of this court. The parties immediately interested in the expenditure *are* the bondholders described in the deed marked "Exhibit A," for, in the event of a sale, the charge imposed by this purchase would rest upon the funds coming to them, now insufficient for the purpose of paying their debt, they do not object. Two-thirds of these are represented by the New Orleans & Texas Railroad Company, and the New Orleans, Mobile & Texas Railroad Company have the next interest.

Article eighth. To the end that your orator, the said Frank A. Ames, as trustee aforesaid, may administer the trust, under the orders, instructions, and decrees of this honorable court, and that the debts due by the New Orleans, Mobile & Texas Railroad Company, originally the New Orleans, Mobile and Chattanooga Railroad Company, in reference to the property on the west of the Mississippi River may be ascertained and declared, and that the property may be legally administered and disposed of, your orator has filed this bill and caused the said defendants, the New Orleans, Mobile and Texas Railroad Company, the
230 successor of the New Orleans, Mobile & Texas Railroad Company, and the owner of all *all* its interests, estates, & franchises, by the means herein stated, to be a party hereto, and the New Orleans & Texas Railroad Company, the owner of a portion of the same and the holders of the bonds to a controlling amount, described in Exhibit' A & B, and Wm. Pitt Kellogg, governor of Louisiana, and trustee in the deed of trust aforesaid, to be made parties to this bill as defendants. He prays to be allowed to bring other parties having interest in the said bonds, by petition and the service of process upon them, without change of the form or allegations of the bill, and that the defendants named as representing the largest proportions of number and value of the interests involved may be treated as representing the absent bondholders, whose names are not known and whose number is too great to be made parties to this bill. And your orator prays that the defendants named may appear and answer the interrogatories particularly addressed to them, and numbered as will appear at the foot of the bill.

And your orator prays that the mortgages or deeds of trust which form the Exhibits A & B be established as the paramount and prior mortgages upon the property mentioned therein to the full extent of the terms thereof.

That the amount of the debt therein described be ascertained
231 and a decree rendered establishing the amount thereof; that a decree of sale be made conforming to the deed authorizing the sale by your orator, under the orders and directions of this court, of the property therein mentioned for the satisfaction of the debt, and reserving in the orders the advantages secured by the deed to the holders of other bonds described in the respective deed of trust or mortgage which have been presented for the consideration of this court.

That protection be given to the holders of the bonds at the bidding, and that the purchasers be invested with the full title to the property that they may purchase; and that your orator, after the payment of the

costs of the court and the expenses of this suit, be allowed to have all of the money that shall be bid at the sale, to dispose of the same conformably to the deeds of trust filed as exhibits to this bill.

And your orator prays for all the relief and orders necessary for the full performance of these trusts by a sale of the said property, the delivery of title and possession to the purchasers and the distribution of the money among the holders of the bonds. Your orator prays for the process of subpœna according to the rules of practice of the court to the defendants named in the caption of the bill, and for such other re-
232 lief as may be compatible with the facts set forth herein or which may be consistent with equity and good conscience.

Interrogatories to be submitted to the New Orleans, Mobile and Texas Railroad Company and to the New Orleans and Texas Railroad Company.

1. Examine the Exhibits A, B, and C attached to this bill, and answer whether they are exact copies of the originals, and whether the bonds therein described have been issued, and for what an amount in the aggregate. Do you admit this copies as sufficient evidence of the deeds?

2. Has there been any default in the payment of the interest on the bonds described in the said deeds of trust? State when the default or defaults occurred, and for what sums; how much interest is due on the said bonds; who are the trustees under the deeds represented by the Exhibits A & B, and how and when were they appointed, and have they possession of the property referred to in them.

3. What amount of bonds were issued of the series secured by the deed Exhibit C? What default has been made in the payment of interest or principal by the grantor in that deed?

4. Have Henry J. Gardner and Peter Butler any interest in the property described in the deeds aforesaid?

233 Wm. P. Kellogg will answer the first and third of the interrogatories addressed to the other defendants.

(Signed) J. A. CAMPBELL,
Solr. for Compt.

The New Orleans, Mobile and Texas Railroad Company, by John B. Alley, president of the board of directors of the said corporation, acknowledges due service of the bill and waive' subpœna, this day of November, 1873.

(Signed) JOHN B. ALLEY,
President N. O., M. & T. R. R. Co.

The New Orleans and Texas Railroad Company, by L. H. Meyer, president of the board of directors of the said corporation, acknowledges due service of this bill and waives subpœna, this fifth day of November, 1873.

(Signed) L. H. MEYER, *Prest.*

(Endorsement:) 7073. A. Frank M. Ames against the New Orleans, Mobile and Texas Railroad Company & others. Bill and Exhibits A, B, C. Circuit court, district of Louisiana. Filed Nov. 28, 1872. Signed F. B. Vinot, dy. clk.

234 *Document B.—Answer of William Pitt Kellogg.*

In the circuit court of the United States for the district of Louisiana, in chancery.

FRANK M. AMES
vs.
THE NEW ORLEANS, MOBILE AND TEXAS Railroad Company and others. } No. 7073.

The answer of William Pitt Kellogg, one of the defendants, to the bill and supplemental bill of complaint of Frank M. Ames.

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer thereto, answers and says:

First and second. That this respondent admits the truth of the first and second articles of the said bill of complaint.

Third. That this respondent admits the truth of the third article of said bill of complaint, except in this, that this respondent denies that the State of Louisiana, by any act of the legislature, or otherwise, authorized or sanctioned the making or execution of any mortgage or deed of trust that was not in and substance made and executed
235 in conformity with the laws of the said State. And this respondent further denies that the mortgage or deed of trust referred to in said article was made and executed in conformity with the laws of the State of Louisiana, but avers the contrary, that such a thing as a deed of trust or the power to confer on trustees the right to enter upon and take possession, manage, control, and sell the property of the mortgagor, is unknown to, and as this respondent is informed and believes, is reprobated by and contrary to the laws of the State of Louisiana. And this respondent further denies that said bonds were issued and that said mortgage was authorized to be made in pursuance of the laws of Louisiana; and he avers that said bonds and mortgage are unlawful and void.

Fourth. That this respondent admits the truth of the fourth article of said bill, except that the State of Louisiana did not authorize or assent to the execution of any mortgage or deed of trust, or contract that was not in conformity with the laws of said State, and that the recognition of the mortgage executed on the 15th March, 1870, and of the bonds issued thereunder is as void and unlawful as the said mortgage and bonds.

236 Fifth. That this respondent admits the truth of the fifth article of said bill, except that this respondent, while admitting the fact that the said complainant took possession of said property as trustee, he denies the right of the said complainant in law to take such possession, or to exercise any powers as trustee in the State of Louisiana.

Sixth. This respondent does not know, and neither admits nor denies, that the property described is not sufficient to pay the amount of the bonds set forth and described in the sixth article of the bill of complaint, but this respondent denies the validity of the execution of the said bonds, according to the laws of the State of Louisiana, and therefore denies that the said property is mortgaged according to law to secure, or is liable for the amount of, the said bonds and the obligations described in

the said Exhibits A and B. Respondent admits the issue of the so-called second-mortgage bonds on the 8th March, A. D. 1869; the execution of a so-called deed of trust to Peter Butler and Henry J. Gardner, as trustees, reserving the precedence and priority of the deeds set forth as Exhibits A and B; that there was a default in the payment of interest and debt; that Butler and Gardner took possession and brought
237 suit to have the property sold; that the New Orleans, Mobile and Texas Railroad Company was the defendant, that a decree was rendered, the property was attempted to be sold the 6th June, 1873, and the property was bid for by said Gardner and Butler, trustees, on the 14th June, 1873, who retained possession in consequence of said sale; that a corporation was, in form, organized by the name of the New Orleans, Mobile and Texas Railroad Company, which received from the said Gar'ner and Butler a conveyance of the property they had so bid in. This respondent denies that the State of Louisiana by an act of the legislature or otherwise authorized or sanctioned the making or execution of any mortgage or deed of trust that was not in form and substance made and executed in conformity with the laws of the said State; and respondent further denies that the deed of trust referred to in said sixth article as executed to Butler and Gardner was made and executed in conformity with the laws of the State of Louisiana; and this respondent further denies the validity of said deed of trust, and the validity of proceedings at law or in equity to enforce its provisions, the whole being null and void and of none effect, and the pretended sale by Butler and Gardner to the said New Orleans, Mobile and Texas
238 Railroad Company, the organization of that company in consequence of the said purchase by said Butler and Gardner, and the organization of the New Orleans and Texas Railroad Company are also null and void and of none effect.

And the respondent further denies that the said New Orleans and Texas Railroad Company is now or ever has been organized as a corporation under the laws of the State of Louisiana, or that it has any existence as a corporation, and, consequently, it cannot be the holder or owner of bonds or obligations of the said New Orleans, Mobile and Texas Railroad Company. And this respondent further denies that the alleged corporations sued in the complainant's bill of complaint as the New Orleans, Mobile and Texas Railroad Company, ever acquired or owned any of the franchises granted by its charter to, or the property owned by, the New Orleans, Mobile and Chattanooga Railroad Company, the name of which was afterwards changed to the New Orleans, Mobile and Texas Railroad Company.

And the respondent further answering, says that the said pretended sale of said Butler and Gar'ner, under the decree of the United States circuit court, was null and void, for the reason that the price
239 bid was less than the amount of the two first-mortgages on said property, and the law of the State of Louisiana requires that at all sales of mortgaged property the amount of the preceeding mortgages, liens, and privileges shall be bid to effect a sale of the property. That there was then, according to the averments of complainant's bill, a first mortgage, as set forth in Exhibit A, and by the laws of the State of Louisiana there was a second mortgage granted to the State of Louisiana, under the terms of and according to the provisions of the act of the legislature of that State, approved 17th February, 1869, to the privilege granted, in which act the property of said New Orleans, Mobile and Chattanooga Railroad Company west of the Mississippi River, afterwards called the New Orleans, Mobile and Texas Railroad Com-

pany, was rendered primarily liable, except to the extent of the first mortgage, for twelve thousand five hundred dollars ($12,500) per mile, to be thereafter executed by said company, known as the first mortgage of said company, and now attempted to be enforced by the complainants. And by the averments of said bill of complaint a deed of trust was executed in favor of Butler and Gardner, which was in fact and in law a third mortgage on said property west of the Mississippi
240 River, if it had any validity according to the laws of the State of Louisiana as a mortgage, which is denied.

Seventh. It is true that the legislature of the State of Louisiana passed an act to expedite the construction of the said New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana, approved 17th February, 1869, by which said company was "authorized to make and issue from time to time, as *herein* [therein] after provided, its bonds to be known as 'second-mortgage bonds' of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana, of such denominations as the company *may* [might] elect, not to exceed in amount twelve thousand five hundred dollars ($12,500) for each and every mile." It is also true that the State of Louisiana was to guarantee such bonds, the payment of which was to be secured by a mortgage in favor of the State of Louisiana, to be recorded in the office of the secretary of state of the State of Louisiana, by which the said mortgage should create a lien and privilege on the property thus mortgaged superior to all other liens and privileges thereon. But the lien of said mortgage was subject and subordinate to a prior lien in favor of a first mortgage to be made by said company to secure bonds to be
241 known as "first-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company," such "first-mortgage bonds and the mortgage securing the same [shall] *to* be a prior lien only to the extent of twelve thousand five hundred dollars ($12,500) per mile." That it is true that the said road was completed to Donaldsonville, on the La Fourche, and that there was issued guaranteed bonds under said act, to the amount of eight hundred and seventy-five thousand dollars, ($875,000,) which are outstanding and unpaid, and on which the State of Louisiana has paid the coupons for interest since the 1st of January, 1873, in consequence of the default of said company to pay said interest. That this respondent , nor can he know whether the allegations of said bill of complaint is true, that the said corporation does not claim any right to demand any additional guarantee of bonds and that the bonds now outstanding are all that have been issued or will be required, and does not admit or deny the same.

This respondent further denies that the said corporation is entitled to secure a bonus or subsidy, for the sum of seven hundred and fifty thousand dollars, ($750,000,) or any other number of the bonds of the State of Louisiana, upon the completion of the section of the road be-
242 tween the La Fourche and Vermillionville, but avers that, on the contrary, the said corporation is insolvent, and, moreover, is not capable of complying with its contract to construct and equip the railroad contracted with the State to be constructed and equipped in the State of Louisiana; that it has failed to comply with the terms of the law of the State of Louisiana, and has forfeited all right to claim subsidy, contribution, aid, or assistance, from the State of Louisiana, having failed to comply with the act of 21st February, 1870. That respondent does not know, and can neither admit nor deny, what, if any, preparations for the completion of the said road to Vermillionville have been made; but he does deny that the complainant has any right to make additions,

or impro'ments or alterations in the said road, as by the laws of the State of Lonisiana no trust can be created, nor can any mortgage have such effect in the State of Louisiana as to confer rights other than those authorized by the laws of the State.

This respondent is advised that he has thus answered all the material allegations of complainant's bill, and that there is nothing in the supplemental bill, requiring to be answered that he has not answered herein as fully as the nature of the plaintiff's bill of complaint
243 requires; but respondent is ready and willing to make such other and further answer as may be deemed necessary.

This respondent further answering says, that the said first-mortgage bonds of said company, if secured by mortgage by the law of the State of Louisiana, can only affect the said railroad and the property of said company, west of New Orleans, to the extent of twelve thousand five hundred dollars per mile; that the mortgage to the governor of the State of Louisiana, contracted for the purpose specified in and by virtue of the act of the 17th February, 1869, is a valid mortgage on the same property to the extent of twelve thousand five hundred dollars ($12,500) per mile, and the State of Louisiana has the right to enforce that mortgage to the extent of the amount of eight hundred and seventy-five thousand dollars, ($875,000,) the amount of bonds issued by the State under the provisions of said act of 17th February, 1869, and the amount of the interest paid on said bonds, in default of payment thereof by said company. That if the sale of said property should be decreed to pay and satisfy said first-mortgage bonds, then this respondent, as the governor of the State of Louisiana demands and requires, in case a sale be decreed at the instance of the complainant, that the said sale
244 be made in conformity with the provisions of the eleventh section of act No. 26, approved the 17th February, 1869, which requires that that part of said main line of said railroad within this State, which shall have been constructed, and in respect of which the State of Louisiana shall have guaranteed second-mortgage bonds, be sold separately, and the proceeds of the part so sold, together with its due proportion of the proceeds of the cars, engines, and personal property of the company, shall constitute a fund upon which the first mortgage shall be the first lien, to the extent only of securing first-mortgage bonds to the amount of twelve thousand five hundred dollars ($12,500) per mile for each and every mile constructed, and after paid such amount of first-mortgage bonds and interest out of the said fund, the surplus shall be applied to the payment of the said second-mortgage bonds guaranteed by the State and interest.

This respondent makes answer to the first and third interrogatories as follows:

1st. I believe the copies of Exhibits A, B, and C are exact copies of the originals, and sufficient evidence of the same. What the bonds amount to I do not know, except those issued under the act of 17th February, 1869, which amount to eight hundred and seventy-five thousand dollars, ($875,000.)

245 3. That there has been default made in the payment on and after the first January, 1873, and the State has paid the interest on and after that day; by such default in the payment the entire principal of the bonds, to wit, eight hundred and seventy-five thousand dollars, has become due.

(Signed) SEMMES & MOTT,
Of Counsel.

Personally came W. P. Kellogg, who swears that the foregoing answers to the bill, supplemental bill, and interrogatories are true, to the best of his knowledge, information, and belief.

(Signed) WM. P. KELLOGG.

Sworn to and subscribed before me this 10th March, 1874.

(Signed) F. A. WELPER,
U. S. Comm'er.

(Endorsement:) No. 7073. U. S. circuit court. Frank M. Ames vs. N. O., Mobile & Texas R. R. Co. and others. "B." Answer of Wm. Pitt Kellogg. Filed March 10th, 1874. Signed F. B. Vinot, dy. clk.

Document C.—Decree.

Circuit court of the United States, district of Louisiana.

246 FRANK M. AMES
vs.
NEW ORLEANS, & TEXAS RAILROAD Company, New Orleans & Texas Railroad Company, Wm. Pitt Kellogg, governor.

This cause came on to be heard on the bill, supplemental bill, exhibits, answers, and the pleadings & proofs & orders in the cause, & the same having been considered, the court declares that the New Orleans, Mobile & Chattanooga Railroad Company, now the New Orleans, Mobile and Texas Railroad Company, did execute two mortgages or deeds of trust in favor of Oakes Ames & Edwin D. Morgan, as trustees, the one bearing date 15th March, A. D. 1870, and the other the 1st day of January, 1872, & that the said plaintiff, Frank M. Ames, by the death or the resignation of the trustees aforesaid, has become & is the trustee in the said deed, with all of the estate, right, interest, powers, capacities, & functions of the said Oakes Ames and Edwin D. Morgan, as therein set forth.

2. That by the said deeds of trust the said corporation, under the authority granted in statutes of the State of Alabama, where the said corporation was created, and by the statutes of the States of Louisiana & of Texas, where the same was recognized and allowed to act as a corporation, did convey to the said Oakes Ames & Edwin D. Morgan,
247 their successors & assigns, any and all railroads of the said corporation, constructed or to be constructed, in that part of the State of Louisiana lying west of the Mississippi River, and in the State of Texas, or either of them, constituting parts, portions, or sections of its main line of branch lines of railroad on the general route prescribed by its charter & amendments, or as authorized or to be authorized by the laws of the State of Louisiana & Texas, whether owned or to be acquired by the corporation, including the right of way & all other rights, interests, & estates of the corporation to the lands occupied by said railroads, or to be acquired by the company for the purpose of constructing, repairing, operating, & doing the business of the said railroad, branch-railroads, or any part thereof, with the depots, station houses, engine-houses, car-houses, freight-houses, storehouses, wharves, warehouses, wood-houses, sheds, machine-shops, business & other offices, now owned or to be acquired in connection with the said railroad or the branches, with the superstructure & tracks thereon, or to be placed thereon, in-

cluding the rail & appurtenances, rolling-stock, engines, cars, tenders, boats, machinery, steamboats, tug-boats, and other boats and vessels, engines, boilers, tackle, apparel, furniture, fixtures, fuel, materials,
248 and all other personal property, with the franchises, rights, privileges, & faculties, whether corporate or otherwise, to construct, maintain, operate, and manage the said railroads, whether derived from the United States of America or from the grants of any State, counties, cities, towns, & places within or through which the said railroad or railroads may pass, with the other rights set forth in said deeds, which deeds of trust are filed as exhibits to the bill, & which exhibits are established in the cause; and that there has been issued as first-mortgage bonds of the description in the said mortgages of dollar bonds the number of seven thousand two hundred & fifty, with the coupons of interest thereto, according to the said deeds.

2. It is further declared that under an act of the general assembly of Louisiana, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile & Chattanooga Railroad Company, in the State of Louisiana," approved 17th February, 1869, provision was made for the first mortgages aforesaid on the main line of the said road from the west bank of the river Mississippi, opposite New Orleans; thence to the Bayou La Fourche, near Donaldsonville, and westwardly to Vermillionville & to the Sabine River, which should be performed to the extent of twelve thousand five hundred dollars upon the com-
249 pleted line of the said road and the arrearages of interest on that sum, and that the same act provided for an issue of a second series of bonds by the same corporation of one thousand dollars each, with interest coupons attached, which were to have the guarantee of the State of Louisiana endorsed thereon in proportion to the length of line of the road completed, and which issue of bonds were to be secured by a second mortgage in favor of the governor of the State, and which should have a preference over all other mortgages except those first-above mentioned, and that those should be preferred only to the extent of twelve thousand five hundred dollars per mile & interest on the completed road upon which said bonds & guarantee should be applicable. It appears that a mortgage was executed to the governor of the State of Louisiana bearing date the 14th day of July, 1876, by the said corporation, which is filed as an exhibit to the bill and is established in this cause. It appears that under this mortgage eight hundred & seventy-five bonds of one thousand dollars each had been issued with the guarantee of the State of Louisiana thereon, and that the bonds with the accruing interest in arrear are secured by the terms of the said mortgage, and are entitled to the protection of the stipulations in the deed of trust to the governor of the State of Louisiana, filed as
250 an exhibit to the bills.

3. It is further declared that the New Orleans, Mobile & Chattanooga Railroad Company, afterwards the New Orleans, Mobile & Texas Railroad Company, failed in the payment of interest on the issues of bonds on the several mortgages or deeds of trust on the first day of January, A. D. 1873, and that this default extends to the coupons of interest in July, 1873, & January, 1874, and that on the first day of April, 1874, there is due on the first mortgages for principal seven millions two hundred & fifty thousand dollars, & for interest one million & fifteen thousand dollars, and that there is due for principal on the second mortgage eight hundred & seventy-five thousand dollars, & for interest one hundred & twenty-two thousand five hundred dollars; that the said first mortgages cover all of the property described

therein, & is the first mortgage upon the whole of the property except of the completed portion of the road from the west bank of the Mississippi River opposite to or near the city of New Orleans, & extending to Donaldsonville, & thence westwardly towards Vermillionville, seventy miles in the whole, upon which seventy miles the preference of the first mortgage is only to the extent of twelve thousand & five hundred dollars per mile & the accrued interest thereon, & that the second
251 mortgage to the governor of Louisiana has a preference for any remainder of the price thereof; and the governor of the State being entitled to require & having in his answer actually required the sale of this portion of the road to be separate, the same will be so ordered.

4. It is further declared that the property described in the first mortgage is now under the control of the plaintiff in this suit, under the powers contained in the same and the orders of this court, & the defendants, the New Orleans, Mobile & Texas Railroad Company, & the successor of the company, described in the acts of the general assembly, & the mortgagors having acquired the rights of that corporation under the decree of this court, and the New Orleans & Texas Railroad Company, having interests in the same, being parties to this record, oppose no defence against the sale of the property to fulfil the conditions of said first and second mortgages, & the equities of the owners of said mortgages being fully established, the court, upon consideration of the premises, doth order & decree that the said plaintiff, under the powers & authority granted to him in the said deeds of trust to Oakes Ames & Edwin D. Morgan & their successor, shall sell the said property described in the said mortgages & deeds of trust & every part & parcel thereof, or which is comprehended within the terms of the same, at pub-
252 lic auction in the city of New Orleans, in front of the custom-house in the said city, between the hours of 11 o'clock a. m. and two o'clock p. m. of a day to be designated by him in the advertisements of sale, under the following conditions & restrictions:

1. There shall be an advertisement of the time and place of the sale for the term of six weeks prior to the day of sale in one daily paper published in the cities of New Orleans, New York, & Houston, setting forth the sale to be made under the terms of this decree, distinguishing the parcels in which the property shall be divided for sale and the terms of the sale as fixed by this decree; and that the sale shall be made prior to the first day of December, 1874.

2. The completed portion of the railroad commencing on the west bank of the Mississippi River near the city of New Orleans, and extending towards Donaldsonville and Vermillionville for the distance of seventy miles, with the cars, engines, rolling-stock & whatever else is appurtenant thereto, & the franchises of the company as applicable to the same, shall be sold in one parcel, and with all the rights & privileges of the trustees in said mortgages and of said defendants to the same.

3. The said trustee shall sell in such parcels as he may deem proper, or in the whole, the remainder of the property described in the deeds of trust aforesaid.

253 4. The sale of the property shall be made for cash. The trustee, in the first or second mortgages, shall be allowed to bid for their respective cestui que trusts at the sale, and in case of the purchase by them or either of them, they shall not be required to pay more than the sum that is due to the mortgagee in the mortgage, which the purchaser shall not represent.

This section is made for application to the sale of the completed road

specified in the second condition above stated, and the trustee under the second mortgage may purchase either as trustee for the State of Louisiana or the bondholders of both.

The advertisements, the conduct of the sale, and the appointment of of the cryer, shall be under the directions of F. A Woolfley, as master, who shall be present at the sale, and shall see that the same shall be conducted fairly and in accordance with this decree; and he shall make a report to the court any irregularity, unfairness, or neglect of duty that may take place at the same.

Ample time shall be given for the biddings, and the adjudication in favor of a purchaser shall not be made until he shall so direct.

5. In case that a person shall bid who is not connected with the mortgagees, as trustees, and in any case where money shall be paid
254 to the trustee by any party, the same shall be deposited in the State National Bank, to abide the confirmation of the report of the sale, in the name of the trustee.

6. The trustee & master shall report the sale to the court within ten days after the same shall be in session after the making of the sale.

The court further orders and decrees that the powers heretofore granted to the trustees to make improvements & additions to the road be extended till the day of sale, and that the trustee retain possession of the property under the trust till the further order of this court.

The costs of the cause will be paid from the proceeds of the sale.

7. Leave to apply for further directions is reserved.

(Signed) W. B. WOODS, *Judge.*

(Endorsements:) No. 7073. U. S. circuit court, district of Louisiana. C. F. M. Ames vs. N. O., M. & T. R. Co., N. & T. R. Co. Wm. P. Kellogg.

Decree entered and filed May 23d, 1874.

(Signed) F. A. WOOLFLEY, *Clerk.*

This decree is satisfactory to Kellogg, trustee, if the court orders a sale.

(Signed) SEMMES & MOTT.

255 *Document D.—Petition to restrain, &c.*

UNITED STATES OF AMERICA,
District of Louisiana:

To the honorable the judges of the circuit court for the district of Louisiana:

The petition of Frank M. Ames, a citizen of the State of Massachusetts, respectfully shews to your honors that he is the plaintiff in the cause pending in this honorable court, and in which the New Orleans, Mobile and Texas Railroad Company, Wm. Pitt Kellogg, and others are defendants, being on the chancery side of the said court, and is on the docket of the court No. 7073.

That in the said suit decretal orders were rendered to which reference is made as a part of this petition, wherein your petitioner was confirmed in the possession of the railroads, franchises, estates, rights, property, & effects of the New Orleans, Mobile & Texas Railroad Company, which lie in the States of Louisiana and Texas, west of the Mississippi River, and described in the deeds of trust filed in the said cause, and was authorized & empowered to sell the same after a publication for six weeks

in newspapers of New Orleans, Houston, & New York, the sale to be made of the entire property under the superintendence & directions of the master appointed in the decree, all of which will appear from the
256 decree rendered in May, 1874, in the said circuit court & of record therein.

Your petitioner states that the defendant, Wm. Pitt Kellogg, appeared to the said cause, and filed an answer therein; that in the said answer the said Wm. Pitt Kellogg insisted upon a mortgage made by the New Orleans, Mobile & Texas Railroad Co., bearing date the 1st July, 1870, filed in the cause, and upon the sufficiency & validity of the same as a second mortgage; that the same was prior to any other to the extent of $12,500 per mile after that sum should be *versed* for *for* the first mortgage, and claimed that the completed portion of the road should be sold apart from the other property of the company, so that it should be paid in its proper order.

That this claim & the amount of debt due was ascertained, & the said Kellogg was allowed to bid at the same.

That the cause was submitted on the bills, answers, & process. The mortgages were all established, and the sale ordered conformably to the prayer in the bill; and, in respect to the second mortgage, to the prayer of the answer aforesaid. Your petitioner states that this decree is in full force, and that your petitioner has constantly expressed the purpose to do all in his power to execute the same.

Your petitioner further states that after the rendition of this de-
257 cree it was deemed proper not to force a sale in the summer season, because of the existing depression in the condition of the State from inundation & financial disorder, and for the reason that many citizens leave the State during that season, & for the further reason that the holders of the bonds in the several mortgages were at a distance, were very numerous, and could not, in the term of six weeks, make suitable arrangements to appear at the sale; that the counsel of the petitioner informed Messrs. Semmes & Mott, the attorneys for the said Kellogg, that the sale would probably be made in November, and that they agreed that an earlier sale would not be expedient, and the prolongation of the time till the 1st December in the decree met with no opposition from them, & it will appear that the draft of the decree was before them, & a portion of it prepared by them, & is in the handwriting of one of the firm who represented the said Kellogg.

But now so it is, may it please your honors, that since the decree aforesaid, the said Wm. Pitt Kellogg, intending to evade the operation & effect of the decree & decretal orders aforesaid, has stimulated & aided in the disturbance of the custody, control, & possession of your petitioner of the said property by causing levies to be made upon the same by the sheriff of Jefferson Parish, under a writ issued from the
258 superior district court of New Orleans, in the manner set forth in the supplemental bill filed in the suit of your petitioner vs. S. B. Call & Co. & others, in this court, & the affidavits & orders filed therein, to which your petitioner craves reference, and has interposed difficulties in the possession & control of the agents of your petitioner; that he caused those agents to be expelled from the same, & the property to be used by the sheriff & his agents for a period of time.

And after the orders were made in this cause the said Wm. Pitt Kellogg has caused to be advertized the property to be sold by himself on the 30th day of September, 1874, a copy of which advertisement is attached to this petition for reference.

Your petitioner states that this is another form of the contumacious

& disorderly temper which this defendant has manifested during the progress of this cause to prevent the due, regular, open, public, judicial sale of this property for the benefit of the creditors under the mortgages.

That an unreasonable time is selected for this proposed sale that the same may become the spoil of speculators and against the interests of those secured by the deeds, who are the bondholders; that the said Kellogg is really a trustee for the bondholders concerned in that mortgage; that the only interest the State has would be entirely satis-
259 fied by the proceeds of the sale to the extinguishment of the bonds of the company to the holders of those bonds, and to the obtaining of a sum sufficient for this. But the interests of these are not considered.

That the effect of such a sale would be to place a cloud upon the title which *which* this court would give, were the decree it has made fulfilled according to its terms.

That such a sale would change materially the execution of that decree, and is in contravention of its terms and spirit.

Your petitioner, therefore, prays that an order be made enjoining & restraining the said Wm. Pitt Kellogg from advertizing the roads aforesaid, or any of the property described in the deeds of trust in favor of your petitioner, or in the mortgage of the governor of the State of Louisiana, on file in this cause, for sale, and from continuing the advertisement in the newspapers, which he has already made, and that he be required to surcease all efforts to make sale of the said property under any power or authority contained in the deed of trust or mortgage aforesaid, but that he abide and fulfill the conditions rendered in the decree already rendered in the cause to which he is a party, as aforesaid, and abstain from all attempts to obstruct or interfere with the terms of the same, or the due, legal, and orderly performance of the conditions thereof.

260 Your petitioner prays that a notice issue to the said defendant Wm. P. Kellogg, in the form of a subpœna, and that all other relief be granted to your petitioner as may be consistent with his bill, and the orders and decrees in the cause and the matter of this petition.

(Signed) S. H. SCRANTON,
(Signed) J. A. CAMPBELL,
Solr. for Pet'er.

The circuit court of the United States, district of Louisiana, in chancery.

FRANK M. AMES
vs. } No. 7073.
WM. P. KELLOGG, ET AL.

Before me personally came S. H. Scranton, who is agent for the said plaintiff & in charge of the property of the said Ames in said railroad, who maketh oath and saith that he is conversant with the matters of facts stated in this petition, and that the same are true in substance & matter of fact.

(Signed) S. H. SCRANTON,
Gen. Supt.

Sworn to & subscribed before me this 31st August, 1874.
(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

(Endorsement:) U. S. circuit court, No. 7073. D. Frank M. Ames vs. New Orleans, Mobile & Texas R. R. Co., Wm. Pitt Kellogg et al. Petition. Filed August 31st, 1874. (O. K.) (Signed) F. A. Woolfley, clerk.

261 *Printed advertisement annexed to petition to restrain.* (*Doct. D.*)

[New Orleans Republican, Wednesday, September 30, 1874.]

OFFICIAL NOTICES.—AUCTION SALE.

Trustees' sale of the main line of the New Orleans, Mobile and Texas Railroad, west of the Mississippi River, and its appurtenances and franchise.

Whereas the New Orleans, Mobile and Texas Railroad Company, a corporation created by the State of Alabama, by an act of the general assembly of said State, entitled "An act to incorporate the New Orleans, Mobile and Chattanooga Railroad Company," approved November 24, 1866, which said corporation was recognized and approved as a body politic and corporate by an act of the general assembly of the State of Louisiana, entitled "An act relative to the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, and authorizing and empowering said company to exercise and enjoy its corporate powers and franchise in the State of Louisiana," approved August 19, 1868, the name of said company having been subsequently changed by authority of a joint resolution of the general assembly of the State of Louisiana, approved eighteenth April, 1871 from the New
Orleans, Mobile and Chattanooga Railroad Company to the New
262 Orleans, Mobile and Texas Railroad Company, did, under its original name, to wit: "The New Orleans, Mobile and Chattanooga Railroad Company," and by virtue of the provisions of an act of the general assembly of the State of Louisiana, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company in the State of Louisiana," approved February 17, 1869, execute an indenture on the first day of July, in the year 1870, between it and the governor of the State of Louisiana, as trustee, for the purpose of securing the payment of the principal and interest of certain bonds, known as second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana, and for the further purpose of securing the State of Louisiana as guarantor of said bonds; and did by said indenture convey to the then governor of the State of Louisiana, and his successors in office, as trustees, the main line of railroad of the said company constructed or to be constructed in that part of the State of Louisiana lying west of the Mississippi River, the said main line extending from the point where it shall intersect the Mississippi River opposite the city of New Orleans, westward to the point where it shall cross the western boundary of the State of Louisiana, in the parish of Calcasieu; also, all the rights of any road-beds and superstructions of the said line of railroad, and all the
other rights, interests, and estates of the said company, in and to
263 the lands occupied by said railroad, or thereafter to be acquired for that purpose, and all depots, station-houses, engine-houses, car-houses, freight-houses, storehouses, warehouses, wood-houses, sheds, wharves, machine-shops, repair-shops, business-offices, and other offices, shops, and buildings, all engines and tenders, cars, and other rolling-stock, all machinery, fixtures, fuel and material, and all real and personal estate within the State of Louisiana, appurtenant to or necessary

for the operation of said main line of railroad then owned or thereafter acquired by said company, and also all the corporate franchises and privileges of said company granted by the State of Louisiana, relative to the construction, operation, and use of said main line of railroad, or any part thereof in said State of Louisiana, and said indenture in pursuance of the provisions of said act, approved February 17, 1869, provides that in case defaults shall be made by said company in the payment of the interest of said second-mortgage bonds, or any part of them, and the same shall remain in arrears for sixty days after becoming due and being demanded of said company, the principal of all the bonds secured by said indenture and then outstanding shall, upon the expiration of said sixty days, become due and payable, and in case of such default it shall be lawful for the governor of Louisiana, and his successors in office, personally, or by attorney or attorneys, or agents or agent, to be selected and empowered for that purpose by the governor
264 aforesaid and his successors in office, to sell and dispose of all and singular the property and franchises before mentioned, and more particularly described in said indenture at public auction, at such time and place in the city of New York, or in the city of New Orleans, as the said governor and his successors in office may designate and appoint, having first given notice of the time and place of sale by advertisement, published not less than six weeks immediately prior to the time designated for such sale, in one or more of the daily newspapers published in each of said cities of New York and New Orleans, and in each and every issue of said daily newspapers. And the said governor or his successors in office is, on the completion of such sale, authorized by said indenture to make a conveyance of the property so sold to the purchaser; and the said indenture further empowers the sale of said property, real and personal, and the franchise aforesaid, in such portions as the said governor or his successor in office may deem advisable, having just reference to the rights and interests of all parties to be affected thereby, and duly observing the laws of the State of Louisiana, and the provisions of said indenture in reference thereto.

And the said indenture further provides that in making such sale reference shall be had to the provisions of the third and thirteenth sections of the said act of the general assembly of the State of Louisiana, approved February 17, 1869, which provides that the rolling-
265 stock and personal property shall appertain to that portion of the main line of railroad which shall have been constructed and operated, and shall be apportioned equally upon each mile thereof, and shall be deemed proceeds of the completed portion of the road, and that a sale may be made of said railroad, subject to the lien of the first mortgage and accrued interest thereon, mentioned in said act, which is a mortgage to secure bonds to the extent of $12,500, and accrued interest thereon, per mile; and whereas said indenture of second mortgage, in compliance with terms of said act of the general assembly, approved February 17, 1869, was duly recorded in the office of the secretary of state of the State of Louisiana; and whereas said company has issued bonds of $1,000 each, dated July 1, 1870, payable on the first of July, in the year 1915, with eight per cent. interest per annum, payable semi-annually, on the first day of January and July of each year, said interest being represented by coupons of $40 each, annexed to said bonds, and said bonds have been guaranteed by the State of Louisiana in the manner in accordance with the provisions of said act, approved February 17, 1869; and whereas the said company has made default in the payment of the interest on said bonds so guaranteed, and said interest has

remained in arrears and unpaid by the said company more than sixty days after the same became due and was demanded of said company; and whereas said default has continued up to the present time: Now, therefore, by virtue of the power and authority in me vested by said act of the general assembly, approved seventeenth of February, 1869, and said indenture of mortgage dated July 1, 1870, and as trustee under said act and said indenture of mortgage, I will proceed, through C. E. Girardey, auctioneer in the city of New Orleans, whom I hereby designate as my agent and attorney for that purpose, to sell said main line of railroad, its franchise and appurtenances, hereinbefore mentioned and described, at public auction, to the highest bidder for cash, at twelve o'clock m., at the St. Charles auction exchange, in the rotunda of the St. Charles hotel, in the city of New Orleans, on Wednesday, September 30, 1874, in the following sections, and subject to the lien of the first mortgage, which is a lien securing first mortgage, bonded to the extent of $12,500 per mile, and the purchaser, it is well understood, is to take the property adjudicated subject to said incumbrances, and the bid which he makes will be considered a bid for so much over and above said incumbrances, and the entire amount bid is to be paid in cash, without any deduction whatever.

The main line of railroad to be sold commences at the point Westwego, opposite the city of New Orleans, on the west bank of the Mississippi River, and extends westward toward and to the point where it intersects and crosses the westward boundary of the State of Louisiana, in the parish of Calcasieu, by virtue of the provisions of said act of the general assembly of the State of Louisiana, approved seventeenth February, 1869. The rolling-stock and personal property is apportioned to that portion of the road completed and in operation.

The sale will be made in sections, as follows:

Section 1. From the point Westwego, opposite the city of New Orleans, on the west bank of the Mississippi River, to a distance of seventy miles, and embraces all the main line of road completed and in operation, and in this section is included all the rolling-stock, cars, engines, and personal property of the company attached to the whole of said main line of road.

Section 2. All the right, title and interest that the State of Louisiana may have in and to the property lying between a point distant seventy miles from the point Westwego and the Sabine River.

The purchaser of each section, respectively, acquires all the rights of way, road-beds and superstructures, and all other rights, interests, and estates of the company in and to the lands occupied by the company embraced within the territorial limits of the sections, and also all depots, station-houses, engine or car-houses, wood-houses, freight or store-houses, warehouses, sheds, wharves, machine shops, siding, repair-shops, business or other offices, shops and buildings situated within the limits of each section, respectively, and also the corporate franchises and privileges granted by the State of Louisiana, in respect to the constructive operations, and are of said main line of road, are acquired by the respective purchasers of each section, so far as they are applicable to the sections purchased.

WILLIAM P. KELLOGG,
Governor and Trustee.

C. E. GIRARDEY,
Auctioneer and Agent designated to make sale.

au16 6w.

Document E.—Restraining order.

Circuit court of the United States, fifth circuit and district of Louisiana.

FRANK M. AMES
vs.
THE NEW ORLEANS, MOBILE AND TEXAS RAILroad Company, Wm. Pitt Kellogg et al. } No. 7073.

AT CHAMBERS,
New Orleans, August 31st, 1874.

In the suit in chancery pending in the said circuit court, wherein said Frank M. Ames is complainant, and the New Orleans, Mobile & Texas Railroad Company, William Pitt Kellogg, trustee, & others, are defendants, and numbered 7073.

This day the complainant, Frank M. Ames, by his solicitor, presents the petition hereto attached, marked ("O. K.,") together with the
269 original bill and supplemental bill in the case aforesaid, with the decretal orders of the court thereon, and the decree of sale, and the affidavit of Scriven H. Scranton, and the answer of William Pitt Kellogg, and thereupon moved for a restraining order, directed to the said William Pitt Kellogg, trustee, to restrain him and his agents from advertising the sale of the railroads aforesaid, described in said bill and in the deeds of trust in favour of complainant, or in the said mortgage in favour of the governor of Louisiana, on file in this case, and from continuing to advertize the same in the newspapers in which he has already made, and to require him to surcease from all efforts to make sale of the said property under any power or authority in the deed of trust or mortgage aforesaid in favor of the governor of Louisiana, and to require him to abide by and fulfil the conditions rendered in the decree already rendered in this cause, to which he is a party as aforesaid, and to abstain from all attempts to obstruct or interfere with the terms of the same, or the due, legal, and orderly performance of the conditions thereof, and that a notice issue to the said defendant, William P. Kellogg, in the form of a subpœna.

Thereupon, on due consideration of the said petition and the said bills, decretal orders and decree, and of the motion based thereon, and of the affidavit,

270 It is ordered that said petition, motion, and affidavit be filed, and that a restraining order do issue, directed to the said defendant, Wm. Pitt Kellogg, his *his* agents, attorneys and aiders and abettors, enjoining and restraining him and them from making any sale of the said property under any power or authority in the deed of trust or mortgage aforesaid, in favour of the governor of Louisiana, and requiring him to abide by and fulfil the conditions rendered in the decree already rendered in the cause, and to abstain from all attempt to obstruct or interfere with the terms of the same, or the due, legal, and orderly performance of the conditions thereof, and that a notice issue to the said William Pitt Kellogg in the form of a subpœna, as prayed for; and this restraining order shall continue in force until the time fixed for the hearing of a motion for a preliminary injunction, notice of which has been given, and until the further order of the court or a judge thereof.

Done in chambers, at New Orleans, this August 31st, 1874.

(Signed) W. B. WOODS,
U. S. Judge.

(Endorsement:) 7073. U. S. circuit court. Frank M. Ames
271 vs. N. O., M. & T. R. R. Co., Wm. Pitt Kellogg et al. Restraining order. Filed Aug. 31, 1874. (Signed) F. B. Vinot, d'y clerk.

Document F.—Decretal order.

United States circuit court, district of Louisiana.

FRANK M. AMES
vs.
THE NEW ORLEANS, MOBILE & TEXAS RAILroad Company, Wm. Pitt Kellogg & others. } No. 7073. In equity.

AT CHAMBERS, *Sept.* 21, 1874.

This case came on to be heard upon the motion made by the defendant, William Pitt Kellogg, trustee, &c., by his solicitors, to dissolve the restraining order heretofore made, to wit, on August 31st, 1874, at chambers, enjoining the said Kellogg from making any sale of the property in the bill of complaint described, &c., and was argued by counsel.

On consideration whereof, it is ordered that said motion be, and the same is hereby, overruled.

Witness my hand the day and year first aforesaid.

(Signed) W. B. WOODS,
U. S. Circuit Judge, Fifth Circuit & District of Louisiana.

272 (Endorsement:) F. U. S. circuit court. 7073. Frank M. Ames vs. The New Orleans, Mobile & Texas Railroad Company, Wm. Pitt Kellogg & others. Decretal order. Entered & filed September 28th, 1874. (Signed) F. B. Vinot, d'y clk.

Supplemental note of evidence.—Document attached to transcript.

On the trial of this cause, January 9th, 1875, plaintiff offered testimony of witnesses taken under commission, (transcript, pages 46 to 67,) the intervenors, Williams & Guion, objecting to interrogatories 4, 5, 6, and 7. The court ordered interrogatory 4 and answers based thereon to be stricken out. Bill reserved by plaintiff.

The intervenors, Williams & Guion, offered the three certificates of stock produced by State treasurer on subpœna duces tecum, as set forth at pages 116 to 121 of transcript. Counsel for plaintiff then tendered same to Judge Campbell, counsel for the railroad company, who declined to receive them, alleging that counsel for plaintiff had no right to tender same nor he to receive them.

Intervenors, Williams & Guion, offered the three bonds set forth in their intervention, and it was agreed that they might be with-
273 drawn and used in original in the supreme court in case of appeal.

Consented to.

KENNARD, HOWE & PRENTISS, *for Intervenor.*
J. Q. A. FELLOWS, *for Plff.*

Agreement of counsel.—Filed March 25, 1875.

Superior district court.

STATE *vs* CLINTON. } No. 369. Appeal of Williams & Guion.

In making up the transcript the clerk may omit:

First. All documents already in supreme court in case of railroad co.'s intervention, No. 4618 of the docket of the supreme court, as well as those excluded by agreement of counsel filed 18th February, 1873.

Second. All other papers not pertaining either to intervention of railroad co. or of Williams & Guion.

Third. But either party may refer to any other documents in record in original.

(Signed) KENNARD, HOWE & PRENTISS, *Attys.*
(Signed) J. Q. A. FELLOWS, *for the State.*

State of Louisiana, superior district court for the parish of Orleans.

I, John Burke, clerk of the superior district court for the parish
274 of Orleans, do hereby certify that the above and foregoing two hundred and nine pages do contain (together with the transcript already on file in the supreme court of the State of Louisiana, being No. 4618 of the docket of said court, and with the accompanying printed report of auditors & experts) a true, correct, and complete transcript of all the proceedings had, of all the documents filed, and of all the testimony and evidence adduced on the trial of the interventions of the New Orleans, Mobile and Texas Railroad Company and of Williams & Guion in the cause wherein the State of Louisiana is plaintiff, Charles Clinton, auditor of public accounts, and Antoine Dubuclet, state treasurer, are defendants, and the said railroad company and Williams & Guion are intervenors, instituted in our said court, and numbered 369 on its docket.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this fifth day of April, in the year of our Lord one thousand eight hundred and seventy-five, and in the ninety-ninth year of the Independence of the United States.

[SEAL.] (Signed) JOHN BURKE,
Clerk Sup. Dist. Court.

275 PRINTED COPY OF AUDITOR'S REPORT OFFERED IN EVIDENCE BY INTERVENORS.

Report of auditors.—Filed December 27th, 1873.

Superior district court, parish of Orleans.

STATE OF LOUISIANA
vs.
ANTOINE DUBUCLET, STATE TREASURER, AND Charles Clinton, State auditor. } No. 369.

The undersigned auditors, appointed in this case to investigate the State debt, respectfully submit the following report:

1. Under an act of the legislature in 1832, $125,000 of forty-years five-per-cent. bonds were issued to purchase lands of the Charity Hospital. The bonds fell due in 1872; $100,000 of them have been paid; the rest, $25,000, are still outstanding.

2. Bonds issued to the New Orleans and Nashville Railroad Company.

On the first of April, 1837, under the authority of section two of an act, entitled "An act to expedite the construction of the New Orleans and Nashville Railroad," approved March 13, 1837, five hundred bonds of $1,000 each, bearing six per cent. interest per annum, payable thirty years after date, were issued to that company. Twenty-four of these bonds were paid at different times, leaving four hundred and
276 seventy-six unpaid at their maturity in 1867. The State being then unable to pay them, the legislature passed an act (No. 15 of 1866) giving to the holders of the bonds the right either to exchange them for "red-back bonds" or to renew them for twenty years longer. Under this law thirty-five were exchanged for "red-back bonds" and the balance ($441,000) were renewed for twenty years. None of these bonds have been paid.

3. Bonds to the Mexican Gulf Railroad Company. On the eleventh December, 1839, March 11 and May 23, 1840, one hundred bonds of $1,000 each, having thirty years to run, bearing six per cent. interest per annum, were issued by the State to the Mexican Gulf Railroad Company, in accordance with act No. 83, approved March 12, 1838. Ninety-seven of these bonds have been paid, leaving still outstanding and past due, $3,000.

4. In 1853, under a general law entitled "An act to provide for the manner of giving the aid of the State to railroad and plank-road companies," being act No. 231 of that year, the State subscribed for one-fifth of the capital stock of each of the following companies:

To the New Orleans, Opelousas and Great Western Railroad Company	$1,200,000
To the New Orleans, Jackson and Great Northern Railroad Company	1,600,000
To the Vicksburg, Shreveport and Texas Railroad Company	800,000
277 To the Grosse Tete and Baton Rouge Plank-road Company	500,000
Amounting to	$4,100,000

The third section of the act provided that all bonds to be issued by the State from time to time in payment of her stock should equal one-fourth of the amount actually paid by the other stockholders. The following payments were made by the State prior to the war:

To New Orleans, Opelousas and Great Western Railroad Company	$650,000
To New Orleans, Jackson and Great Northern Railroad Company	884,000
To Vicksburg, Shreveport and Texas Railroad Company	298,000
To Grosse Tete and Baton Rouge Railroad Company	160,000
In all	$1,992,000

In bonds having forty years to run from their respective dates, and bear-

ing six per cent. interest per annum, payable semi-annually. None of these bonds have been paid.

5. Bonds for relief of State treasury.

By act No. 277 of 1853, entitled "An act to provide means for the relief of the treasury of the State," approved April 30, 1853, the governor was authorized to issue bonds of $500 each, payable in forty years, and bearing interest at the rate of six per cent. per annum, payable semi-annually, for the total amount of $750,000. The bonds
278 were issued on the eighteenth of July, 1853, and their proceeds placed to the credit of the general funds of the State treasury. All these bonds are now out.

6. Free school-fund bonds.

By law Congress donated to each and every township in this State the sixteenth section thereof for educational purposes, and provided that the proceeds of the sales of these sixteenth sections should be paid into the State treasury, and remain inviolate forever for the benefit of these townships. The legislature subsequently carried out the intention of Congress by passing laws authorizing the sale of these lands under certain terms and conditions. By referring to the several constitutions of this State it will be seen that each of them declares that "the proceeds of all lands heretofore granted by the United States for the use and support of public schools, and of all lands or other property which may hereafter be bequeathed for that purpose, and of all lands which may be granted or bequeathed to the State, and not granted or bequeathed expressly for any other purpose, which may hereafter be disposed of by the State, and the proceeds of all estates of deceased persons to which the State may be entitled by law, shall be held by the State as a loan, and shall be and remain a perpetual fund, on which the State
279 shall pay an annual interest of six per cent., which interest, with the interest of the fund deposited with this State by the United States under the act of Congress approved June 23, 1836, and the rent of the unsold lands, shall be appropriated to the support of such schools, and this appropriation shall remain inviolable."

From year to year, and as the voters of the several townships would authorize the sale of these sixteenth sections, they were disposed of to the highest bidder, and the proceeds paid into the State treasury to the credit of general funds, and used by those funds to pay all claims against the State not otherwise provided for. That system begun in 1842, was kept up until 1857, when act No. 182, entitled "An act in relation to certain debts of the State," was passed, under and in accordance with which the amount due by the State to the free-school fund was ascertained and fixed, and the amount ($529,000) so fixed was declared the principal upon which interest should be paid to the several townships. Accordingly five hundred and twenty-nine bonds of $1,000 each, were issued, and the mere book-account in the treasury department was thereupon closed. The bonds are dated the first of July, 1857, payable forty years from that date, and bear six per cent. interest per annum, payable semi-annually.

280 These bonds have been sold under act No. 81 of 1872, and their amount is, therefore, twice due by the State, as will hereafter appear.

7. Seminary fund bonds.

The State having used the proceeds of the sales of the seminary lands, settled her indebtedness to the seminary-fund by issuing bonds for $1,000 each, having forty years to run and bearing six per cent. interest

per annum, to the amount of $136,000, which bonds are now in possession of the state treasurer.

8. Bonds loaned to the Citizens' Bank.

An act passed in 1836 to loan the bonds of the State to the Citizens' Bank to the amount of $12,000,000.

The third section of the act provided, "That for the guarantee of the bonds to be emitted by the State in favor of the Citizens' Bank, and of the interest thereof, and for which the State pledges its faith, all the securities granted by the act of incorporation of said bank, and especially by the third and fourth sections of said act, to the holders of its bonds, are hereby transferred to the State, and the holders of the bonds which may be issued in virtue of this act," etc. The bank has paid the interest on the bonds, and has redeemed the greater part of them, leaving $4,297,333.33 still outstanding.

281 9. Bonds to the Consolidated Association of the Planters of Louisiana.

Under acts passed in 1828, 1830, 1835, and 1836, the State loaned $4,837,000 in bonds to this association, upon terms and conditions similar to the loan to the Citizens' Bank. All of these bonds are reported paid, except $531,447.50.

10. $1,000,000 of bonds for levee purposes.

An act, entitled "An act to authorize the governor to issue eight-per-cent.-interest bonds of the State to the amount of $1,000,000, to defray the expenses of building the levees in accordance with the contracts made by him and the levee commissioners," was passed December 22, 1865.

The second section of this act authorized the governor and the board of levee commissioners to advertise for thirty days the sale of these bonds, and in case of not getting par value for them, to pledge them for loans, in order to carry out the provisions of the law. The bonds were duly executed and placed under the control of the levee commissioners.

Failing to dispose of the bonds by sale, as provided by law, the levee commissioners applied to the auditor and treasurer (the legislature not being in session,) for an exchange of bonds for an equal amount of State notes.

282 The exchange was made, and $700,000 of State notes were issued in exchange for $700,000 in bonds; which exchange was ratified by act No. 117 of 1867, entitled "An act making appropriations to the board of levee commissioners for levee purposes." Seven hundred thousand dollars of these bonds were then placed in the possession of the State treasurer, and there they remained until act No. 35, entitled "An act to authorize the return of $150,000 from the general fund to the levee and drainage fund, and to appropriate the same for levee purposes," approved March 1, 1867, was adopted. The second section of this act provided, that should there not be funds in the State treasury available for the purpose of this act, the auditor and treasurer were authorized to borrow for sixty or ninety days $150,000, and to pledge as collateral security for said loan so much as might be necessary of these $700,000 of bonds. Again, under act No. 88 of the same year entitled "An act to authorize the auditor and treasurer to borrow $50,000," the same powers were given to these officers, and a loan was effected by pledging some of these bonds. On the twenty-eight' of March, 1867, joint resolution No. 122 entitled "Joint resolution making appropriations for the protection of levees in the State" was adopted, wherein the State treasurer was authorized to pledge the bonds of the

283 State "now in the treasury" to secure a loan of $250,000. The loan was effected for the purpose specified.

The bonds referred to in the joint resolution as "now in the treasury," were the unpledged portion of the series of $1,000,000 authorized by the act of twenty-second December, 1865, above referred to; but the legislature had, two days before the passage of said joint resolution, adopted act No. 116, which repealed the said act of December 22, 1865, and directed the bonds to be cancelled and destroyed. None of these bonds were destroyed or cancelled. Those which had not been pledged already, were subsequently pledged for further loans, and when the various loans became due, the State failing to pay them, the bonds were all sold to pay the loans, and netted about thirty-three per cent. This $1,000,000 of bonds are all out and add so much to the debt of the State.

11. $4,000,000 levee-bonds.

Act No. 115, entitled "An act to provide means for the construction of levees by the issue of bonds of the State for $4,000,000, and to provide for the redemption of the same," approved March 26, 1867, authorized the governor to issue bonds of the State to the amount of $4,000,000 payable in forty years, bearing six per cent. interest, payable semi-annually. These bonds, all dated May 1, 1867, were subject to the order of the board of levee commissioners, who were authorized by the
284 second section of the law to sell the bonds or any portion of them at not less than eighty per cent., at such time and in such manner as they might deem expedient. In default of sale they were authorized to pledge them for any loan they might effect. A detailed statement from the books of the treasury department shows that 2,414 of these bonds were regularly issued from time to time to contractors and others, at eighty cents on the dollar.

In order to dispose of the remaining 1,586 bonds, the legislature of 1868 passed an act, (No. 38,) appointing the governor, treasurer, and one member of each house of the general assembly a committee to sell these remaining 1,586 bonds, with power to dispose of them at such price "as might to them seem most to the public advantage and interest." They were further empowered, by the second section of the law, "to exchange any portion of said bonds at market-price for auditor's warrants issued under authority of the then general assembly." The law further provided that one-half of the proceeds of these bonds should be placed to the credit of the general fund and one-half to the levee-fund.

The report of that committee, made on the 25th of February, 1869, states that the 1,586 bonds netted $834,600, or about fifty-two and one-half cents on the dollar.

12. Bonds for redemption of certificates of indebtedness.

285 By act No. 5, entitled "An act to authorize the issue of certificates of indebtedness and of bonds for the funding of the same," approved February 9, 1866, the auditor and treasurer were authorized to issue $2,000,000 of certificates of indebtedness, commonly known as State notes, receivable for all dues to the State. The full amount authorized by law was issued.

By the third and fourth sections of the same act, and in order to fund these certificates if necessary, bonds were authorized to be issued, payable forty years from their respective dates, bearing six per cent. per annum. No bonds were ever issued under this act; but the legislature of 1870, (extra session,) by joint resolution No. 10, authorized the governor and treasurer, and in fact made it their duty to effect from time to time such loans of money as might be necessary to provide for any de-

ficiency in the treasury to meet the interest on the State debt. The third section of the resolution authorized the governor to pledge a sufficient number of bonds of the State provided for by the act first quoted, whenever he would effect a loan. On the twenty-seventh of October, 1870, the governor pledged to the Citizens' Bank of Louisiana two hundred and fifty of those bonds of $1,000 each, for a loan of $125,000, which amount was paid into the treasury of the State to the credit of the interest tax fund.

286 This pledge was forfeited, and the bonds were sold at private sale, (although the act required them to be sold at public auction to the highest bidder,) for sixty-four cents on the dollar, and the proceeds, after deducting interest, expenses, etc., say $28,899.30, were paid into the State treasury on the twenty-ninth December, 1871, and applied as above stated.

13. Issue of State bonds to pay certain debts.

By act No. 15, approved February 12, 1866, entitled "An act to authorize the issue of State bonds, for the purpose of paying certain debts," the governor was authorized "to cause to be issued, from time to time, as the wants of the treasury may require it, bonds to an amount not exceeding $1,500,000."

The second section directed that the bonds which might be issued under this act, and coupons attached, should be made payable to bearer, the rate of interest not to exceed six per cent. per annum, payable semi-annually, and the bonds be payable at the expiration of twenty-years. The third section authorized the exchange of said bonds at not less than their par value, for overdue coupons of interest, or for bonds of the State then due or maturing in 1867, or for outstanding warrants issued by the auditor to meet appropriations already made. The bond-book in the auditor's office shows that there were exchanged for pas' due bonds and coupons $978,800

287 Sold by order of Governor Warmoth, ten bonds of $500 each, at fifty cents on the dollar 5,000

983,800

14. The North Louisiana and Texas Railroad.

Under act No. 108, approved September 6, 1868, entitled "An act to incorporate the North Louisiana and Texas Railroad Company," the governor issued to that company, during the year 1869, five hundred and forty-six bonds, and in the year 1873 five hundred and seventy-six, making eleven hundred and twelve bonds of $1,000 each, $1,122,000, bearing eight per cent. interest. The eleventh section of the act directed "that whenever five miles of said North Louisiana and Texas Railroad shall have been completed and in running order, and the fact made known to the governor, he shall cause to be issued to said company six thousand dollars of State bonds for each and every mile of single track thus completed, until said railroad be finished; the State having the guarantee of only a second mortgage on the road, fixtures, and appurtenances, to secure the final payment of the bonds issued, with accrued interest." The twelfth section provides that said railroad company shall, on or before the maturity of any of the interest-coupons on any of said bonds, deposit the amount thereof in the State treasury for the payment thereof; and, in the event of the failure to make such deposit,

288 that no further issue of bonds shall be made, and the State shall have the right to foreclose the mortgage therein given to secure the payment of the bonds and interest issued to said road according to the provisions of this act.

By act No. 105 of 1871, approved June 27, 1871, it was provided that said railroad company shall have the right to borrow money and pledge or mortgage said railroad, its property of every kind, and the franchises thereof, to secure the payment of the same; to have the force and effect of a lien and privilege or first mortgage thereon, to the amount of $25,000 per mile.

The treasurer's books show that the only deposit the company ever made to meet the interest on the State bonds, was $19,120, during the year 1869 and 1870. Subsequently, by act No. 97, approved April 10, 1872, it was directed that in lieu of the second mortgage required by the eleventh section of the charter of the North Louisiana and Texas Railroad Company, to be given to secure the State for the ultimate payment of the bonds of the State, issued in conformity to said charter on act No. 108 of 1868, the said company might give stock to the State to an amount equal to the aggregate sum of the State bonds issued or to be issued under said act No. 108 of 1868, say 11,220 shares, or $1,122,000, of the capital stock of said company; and in consideration of the issue
289 and delivery of said stock, the said company shall be relieved from all liability for the aforesaid bonds of the State, so that, by the operations of the law, the State, though only a trustee in the original act of incorporation, becomes a subscriber in said company to the amount of $1,220,000, and liable therefor in bonds already issued.

15. The New Orleans, Mobile and Chattanooga Railroad Company.

By act No 26, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company," approved February 17, 1869, it was provided "that said company be and is hereby authorized to issue from time to time its bonds, to be known as second-mortgage bonds, guaranteed by the State, an amount not exceeding in the aggregate $12,500, for each and every mile in length within the State of Louisiana, said bonds having not less than forty nor more than fifty years to run from their date, bearing interest not exceeding eight per cent. per annum."

To secure the payment of the principal and interest of the bonds, the law required a mortgage of the road (second to a prior mortgage of the same amount) to be made by the company to the governor, as trustee.

290 Under this act $750,000 of bonds have been issued. A recent sale of the road under the first mortgage has left the State without security for its bonds.

16. The Mississippi and Mexican Gulf Ship-Canal Company.

By an act entitled "An act providing State aid in the construction of the Mississippi and Mexican Gulf Ship-Canal, and for issue of State bonds therefor," approved March 8, 1869, being act No. 116 of that year, the State, by the first section of the law, authorized the governor to issue the bonds of the State to an amount not exceeding $600,000, in aid to said canal company. An examination into this shows that on the first of March 1869, the governor issued $480,000 of bonds to that company, payable thirty years after date, bearing seven and three-tenths per cent. per annum. The State holds a first mortgage on said canal, its appurtenances, fixtures, and all lands acquired, either by purchase or grant.

17. Bonds for State penitentiary.

The general assemby of 1869, under act 55, approved March 5, ratified the lease made by the governor of the State, with Messrs Huger & Jones, which lease had been approved by military authority in 1867, and authorized the governor to issue bonds to the lessees, to the

291 amount of $500,000, of forty years at seven per cent. interest, for the purpose of improving the buildings, and placing additional machinery therein. The bonds were issued on the first of November, 1869.

18. The Bayou Bœuf and Crocodile Navigation Company.

During the session of the legislature of 1869, an act was passed, entitled "An act to grant the aid of the State to the Bœuf and Crocodile Navigation Company," which authorized the governor to issue to that company $80,000 of State bonds, payable in twenty years, and bearing eight per cent. per annum interest. The bonds were issued on the third of January, 1870. The second section of the act authorized the president and secretary of said company to sell or pledge the bonds as they might deem necessary to raise money for the completion of the work required to render navigable the said Bayous Bœuf and Crocodile. In order to secure the final payment of the said bonds and the interest that may accrue thereon, the State holds a first mortgage on all the rights and privileges of said company; and by the third section of the law the company is to refund to the State, at the end of twenty years, all sums of money which she may have paid on account of said bonds.

292 19. Bonds issued for work done and to be done on the levees.

Under act No. 32, entitled "An act to provide means for the payment of work done or to be done on the levees of the State, under contract by the board of public works, by the issue of the bonds of the State to the amount of $3,000,000 and to provide for the redemption of said bonds, approved February 25, 1870, it was provided that the governor of the State be authorized to issue bonds signed by him and countersigned by the secretary of state to the amount of $3,000,000, payable in five years from the date of issue, bearing eight per cent. interest per annum; said bond' to be deposited in the State treasury, subject to the order of the governor, the president of the board of public works, and the fiscal agent of the State. The law further provided for the sale of these bonds at their highest market-value, but never at less rate than ninety cents on the dollar, and directed the proceeds to be paid into the State treasury to be drown for by the board of public works, exclusively for the payment of work done under contract with said board. The books of the treasury department show that the bonds were sold at ninety cents on the dollar, and the whole proceeds, less ex-
293 penses, etc., were paid into the State treasury, and the money was paid out by the treasurer on warrants from the board of public works as directed by law. The proceeds of the bonds amounted tn $2,700,000 less $16,667.41 expenses.

Forty thousand dollars of these bonds have been paid, leaving still outstanding $2,960,000 due March 1, 1875.

20. New Orleans and Chattanooga Railroad Company.

By act No. 31, entitled "An act relative to the New Orleans, Mobile, and Chattanooga Railroad Company, etc., approved February 21, 1870, the governor was authorized to issue the bonds of the State to the company to the extent of $3,000,000, payable forty years from date, bearing eight per cent. interest per annum, upon condition that the company should construct a railroad from a point on the right bank of the Mississippi River, opposite either of the cities of New Orleans, Jefferson, or Carrollton, to a point at or near Houston, Texas. The road was devided into four sections, and payments were to be made as the sections should be completed. The first section to Donaldsonville was finished, and $750,000 of State bonds were issued on the first July, 1870. No

other section has been finished, and the company has failed to complete the road within the prescribed period.

294 21. New Orleans, Mobile, and Texas Railroad Company.

By the first section of act No. 95, approved April 20, 1871, the governor was authorized to subscribe for 25,000 shares of $100 each of the capital stock of the New Orleans, Mobile and Texas Railroad Company, the certificates of stock to be deposited with the State treasurer as they were paid for in bonds. On the twenty-first of April, 1871, the governor issued the bonds in favor of that company, to the amount of $2,500,000, payable forty years from their date, bearing eight per cent. interest per annum, and on the fifth of June, 1871, three certificates of stock of the company, Nos. 794, 795 and 796, representing 25,000 shares, were deposited with the State treasurer. The title of the act under which these bonds were issued reads: "To relieve the State from its obligations to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, under the act of February 21, 1870, and to secure the construction of the road from Vermillionville to Shreveport." These bonds are recorded nowhere in the books of the treasury department, and, though reported as an outstanding of the State, they are so reported merely from a memorandum-debt of the secretary of state.

22. Bonds issued for the relief of P. J. Kennedy.

295 By act No. 105 of 1870, entitled "An act for the relief of P. J. Kennedy, and to provide for the issue of bonds in payment of indebtedness due him," which act became a law without the approval of the governor, bonds of $1,000 each to the amount of $134,000 dated January 1, 1870, payable twenty years after date, and bearing eight per cent. interest per annum, were issued and delivered to said P. J. Kennedy. The act under which this grant was made recites in the preamble the losses of Mr. Kennedy through the neglect of the State to comply with the terms of a contract.

23. Funding the floating debt of the State.

By act No. 69, entitled "An act to provide for the payment or funding of the floating debt of the State by the issue and sale or exchange of State bonds," approved March 16, 1870, the governor was authorized to issue bonds of the State for $1,000 each to an amount of $3,000,000, payable in forty years from the first of May 1870, bearing six per cent. interest per annum.

By the second section of the act the governor, the auditor, and the president of the Citizens' Bank, were constituted a board of liquidators and were authorized to sell these bonds at not less than seventy-two cents on the dollar. The proceeds were to be paid into the State

296 treasury, and credited to a fund called "Floating-debt liquidation-fund," and be applied solely and exclusively to the payment and redemption of the floating debt of the State, past-due interest-coupons, and past-due State bonds. In case of failure of the sale of the bonds the board of liquidators was authorized and empowered to exchange the bonds at the rate of $100 in bonds for each and every seventy-two dollars of outstanding evidences of indebtedness against the State, which had been issued in accordance with law prior to the passage of the act. The books of the treasury department show that $2,000,000 of these bonds were sold in New York at seventy-two cents on the dollar on the twentieth June, 1870; that the proceeds, $1,430,608.49, were paid into the State treasury, and applied to the payment of outstanding obligations; that of the last million of bonds 993,000 were exchanged for evidences of debt, and $7,000 were sold at seventy-two cents on the

dollar, and the proceeds paid into the treasury. The evidences of debts, according to the detailed statement furnished by the treasurer consisted in warrants issued for all purposes of the government. A portion of them can be regarded clearly as floating debt of the State, within the scope of the law. The balance requires investigation. Of these bonds $50,000 have been redeemed, leaving outstanding $2,950,000, due May 1, 1910.

297 24. Free school fund.

The origin and nature of this fund have been described above. In 1872, the legislature by act No. 81 sought to abolish this fund; the act provided that the bonds therein should be sold at public auction to the highest bidder for United States currency, auditor's warrants on the State treasurer, or certificates of indebtedness, and that no bids should be received of less than sixty-five cents on the dollar for State bonds, and eighty cents on the dollar for city consolidated bonds. The sale took place on the seventeenth of June, 1872. The official report of the State treasurer of January, 1873, shows that 1,141 bonds belonging to the fund, amounting to $1,123,500, were sold for $1,096,956.25.

The legislature, (confederate,) in 1863, took from this fund and expended for "State" purposes $200,000. One hundred and thirty-eight thousand ($138,000) dollars in bonds belonging to the fund have been lost. The State, therefore, owes the school fund—

Bonds sold	$1,123,500
Bonds taken out in 1863	200,000
Bonds lost	138,000
Total	$1,461,500
To which should be added the interest thereon since the subversion of the funds, about	150,000
Making a total of	1,611,500

298 25. Due the United States.

The State of Louisiana owes the United States under the deposit-act (division of surplus revenue)	$479,914 14

26. Miscellaneous debts of the State.

A statement from the auditor's office, on the first of October last, puts the miscellaneous debts of the State as follows:

Amount of outstanding warrants of all descriptions	$2,828,024 08
Amount of certificates of indebtedness of all descriptions	399,336 62
Outstanding State notes	21,690 00
Other debts described in auditor's statement, due on demand, about	34,000 00
Total amount of miscellaneous debts	3,283,050 70

27. Contingent liabilities.

The following are the contingent liabilities of the State under acts passed prior to the limitation of the State debt:

Balance of subscription of the State in 1853 to railroads.	$2,108,000 00
Bonds which may be issued to the Mississippi and Mexican Gulf Ship-Canal Company under act No. 116 of 1869	120,000 00
Bonds which may be issued to the New Orleans, Mobile and Texas Railroad Company under section 1 of act No. 26 of 1869	2,075,000 00

Bonds which may be issued to the same company under section 7 of act No. 31 of 1870	$2,250,000 00
299 Bonds which may be issued to the New Orleans, Baton Rouge and Vicksburg Railroad Company, act No. 143 of 1869; number of miles 500, at $12,500 per mile	6,250,000 00
Bonds which may be issued to establish a charity hospital at Shreveport, under act No. 149 of 1869	100,000 00
Obligation to subscribe 1,000 shares of stock of Mississippi Valley Navigation Company of South and West, act No. 84 of 1870	100,000 00
	$13,003,000 00

28. Contingent liabilities under acts passed by the legislature subsequently to the adoption of the amendment of the constitution limiting the State debt:

Act 106, passed in 1870, (printed with the laws of 1871,) entitled "An act to incorporate the Arkansas and Delta Railroad Company, and granting aid to the same.	$375,000 00
Act 28, 1871, granting aid to the Southeastern Railroad Company	375,000 00
Act 29, 1871, creating the Mississippi River Navigation Company, and granting the aid of the State thereto	250,000 00
Act 31, 1871, to build a State-house, and providing for the issue of bonds therefor	1,500,000 00
300 Act 40, 1871, to incorporate the Alexandria and Fulton Railroad Company, and to grant State aid thereto	1,875,000 00
Act 41, 1871, to promote the interest of commerce by establishing the Louisiana Warehouse Company, and guaranteeing the bonds thereof	1,500,000 00
Act 106, approved October 25, 1871, "relative to the New Orleans and Northeastern Railroad Company, and to facilitate and aid the construction of said railroad," etc.	1,212,500 00
Act 43, 1873, provides, in section 9 of the act, for the issue of bonds to the Levee Company	1,000,000 00
	$8,087,500 00

RECAPITULATION.

1. Bonds for the Charity Hospital	$25,000 00
2. Bonds for the Nashville Railroad	$441,000 00
3. Bonds for the Mexican Gulf Railroad	3,000 00
4. Bonds, subscription to railroads in 1853	$1,992,000 00
5. Bonds for relief of State treasury in 1853	750,000 00
6. Free-school-fund bonds, 1857	529,000 00
7. Seminary-fund bonds, 1857	136,000 00
10. Bonds for levee purposes, 1866	$1,000,000 00
11. Levee bonds in 1867	4,000,000 00
12. Bonds for redemption of certificates of indebtedness.	250,000 00
13. State bonds to pay certain debts, 1866	983,800 00
14. Bonds for North Louisiana and Texas Railroad	1,122,000 00
15. Bonds for New Orleans, Mobile and Chattanooga Railroad Company, 1869	750,000 00

16.	Bonds for Mississippi and Mexican Gulf Ship-Canal Company, 1869	480,000 00
301	17. Bonds for State Penetentiary, 1869	500,000 00
	18. Bonds for Bœuf and Crocodile Navigation Company, 1869	80,000 00
19.	Bonds for work on levees	2,960,000 00
20.	Bonds for Chattanooga Railroad Company, 1870	750,000 00
21.	Bonds for New Orleans, Mobile and Texas Railroad Company, 1871	2,500,000 00
22.	Bonds for the relief of P. J. Kennedy	134,000 00
23.	Bonds funding the floating debt of the State	2,950,000 00
24.	Due the free-school fund	1,611,500 00
25.	United States deposit account	479,914 14
26.	Miscellaneous debts	3,283,050 70
		$27,702,264 84

STATE BONDS SECURED.

8.	Loaned to the Citizens' Bank	$4,297,333 33	
9.	Loaned to Consolidated Association	531,447 50	
			$4,828,780 83
27.	Prior limitation, contingent liabilities		13,003,000 00
28.	Post limitation, contingent liabilities		8,087,500 00
	Grand total		$53,621,545 67

The above is a succin't statement of the origin and nature of the existing obligations and contingent liabilities of the State.

All of which is respectfully submitted.

New Orleans, Dec. 24, 1873.

(Signed) MOSES GREENWOOD.
" ROBERT WATSON.
" BENJ. F. FLANDERS.
" H. PERALTA.
" LOUIS SCHNEIDER.
" B. F. JOUBERT.
(Signed) JOHN R. CLAY.

302 Supreme court of the State of Louisiana.

Case continued.—Minutes Tuesday, November 16, 1875.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANTOINE DUBUCLET, State treasurer, Williams & Guion, intervenors. } No. 5768.

This case was called for trial, and having heard argument from J. Q. A. Fellows, esq., of counsel for plaintiff & appellee, the court ordered said case to be continued for further argument till to-morrow, Wednesday, the 17th instant.

Case submitted.—Minutes Wednesday, November 17, 1875.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANT. DUBUclet, treasurer, Williams & Guion, intervenors. } No. 5768.

This case was called for resumption of trial, and, having heard
303 argument from John B. Cotton, esq., of counsel for plaintiff & appellee, and William W. Howe, esq., of counsel for the intervenors, appellants herein,

The court took said case under advisement upon the briefs on file and to be filed within twenty days from this date.

Judgment & decree.—Minutes, Monday, April 17, 1876.

The court was duly opened pursuant to adjournment. Present, their honors, James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief-justice.

His honor, Justice Wyly, pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, &C., AND ANtoine Dubuclet, State treasurer, Williams & Guion, intervenors. } No. 5768.

On appeal from the superior district court for the parish of Orleans.

It is ordered that the judgment herein, perpetuating the injunction and declaring void the bonds issued under act 95 of the acts of 1871, amounting to $2,500,000.00 be affirmed, appellants paying costs of appeal.

(The chief-justice dissents and reserves the right to file his reasons hereafter.

304 For the reasons assigned in the written opinion this day read in court, Mr. Justice Taliaferro concurs in the decree just read.)

Opinion.—Filed April 17, 1876.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANTOINE Dubuclet, treasurer, Williams & Guion, intervenor'. } No. 5768.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice WYLY:

The State enjoined the auditor and treasurer from paying the con-

pons attached to the bonds issued under act 95 of 1871, on the ground that the issue of said bonds, amounting to $2,500,000.00, was in contravention of the constitutional amendment, and said bonds are not valid obligations of the State. The New Orleans, Mobile and Chattanooga Railroad Company intervened.

The case was before this court in 1874, and it was remanded. Before the trial on the remandment, Williams & Guion, holding certain bonds of this issue, intervened, setting up their right as third holders to
305 obtain payment of the coupons and to have their bonds declared valid. The court perpetuated the injunction and decreed said bonds to be void. Thereupon the intervenors, Williams & Guion, appealed.

It will be necessary to examine the provisions of the acts of 1869, 1870, and 1871 in order to determine whether the bonds in question are valid. By act 26 of 1869, it was provided the New Orleans, Mobile and Chattanooga Railroad Company shall complete the first section of 40 miles within one year from the survey and location, and the whole road to Houston, Texas, within 3 years and six months from the survey and location, eight months being allowed for making the survey and location, "and in case of the failure of said company to survey, locate, and construct the said main line of said railroad within the State of Louisiana, in the manner and within the time limited in this section of this act for such survey, location, and construction, the obligation of the State of Louisiana, by virtue of this act, to guarantee the second-mortgage bonds of said company, (as in this act provided) for or upon that portion of the said main line of railroad not constructed within the time limited, shall cease and determine, and none of said second-mort-
306 gage bonds for or upon that portion of said main line of railroad not constructed within the time limited shall be guaranteed by the State of Louisiana. But no failure of the company to complete said railroad shall effect or forfeit the rights of said company to maintain and enjoy such portions of its railroad as it shall have completed, nor any other rights or franchises secured to said company under its charter, or by the laws of the State of Louisiana, or any other State, relating thereto."

By act 31 of 1870, it is provided, among other things, "that the said company be, and is hereby, empowered and authorized to locate, construct, and build, and thereafter to own, maintain, manage, and use a railroad with one or more tracks and suitable turnouts, from any point upon the main line of its railroad, as the same has been or may hereafter be located in the parish of St. Martin, or in the parish of Lafayette northwesterly, on such a course or route as the directors of said company may deem most expedient and for the interest of said company to adopt, towards and to Shreveport, in the parish of Caddo, via Alexandria, in the parish of Rapides * * * ; provided, however, that such of the provisions of the act entitled 'An act to expedite the construction of the New Orleans, Mobile and Chattanooga Railroad Com-
307 pany, in the State of Louisiana,' approved February 17th, 1869, as relate to the guarantee of the second-mortgage bonds of said company, shall be applicable only to such parts or portions of the said lines of railroad to Shreveport and to said point in the parish of West Baton Rouge as shall be surveyed, located, and constructed within five years from the acceptance of this act by said company, and said provisions of said act shall be applicable to such parts or portions of the said last-mentioned lines of road as shall be surveyed, located, and constructed within the time last aforesaid."

But what are the provisions of the act of 17th February, 1869, which

relate to the guarantee of the second-mortgage bonds of said company?

As they are made applicable to the branch road to be extended to Shreveport, it is important to determine the obligation of the State arising from said provisions.

Section 1 of said act provides:

"That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, be and is hereby authorized to make and issue, from time to time, as hereinafter provided, its bonds, to be known as 'second-mortgage bonds of the New Orleans Mobile and Chattanooga Railroad Company, guaranteed by the State
308 of Louisiana,' of such denominations as the company may elect, but to an amount not exceeding in the aggregate twelve thousand five hundred dollars for each and every mile in length of the main line of its railroad westerly from the city of New Orleans and within the State of Louisiana, which said company shall construct," * * *.

Section 7 provides that the said mortgage after it has been executed shall be delivered to the governor, and if the same be in conformity with the provisions of this act he shall endorse his approval in writing thereon, and cause the said mortgage, thus approved, to be recorded in the office of the secretary of state.

Section 8 provides "that, when the said second mortgage shall have been so delivered, approved, and recorded, and one continuous portion or section of forty miles in length of said main line of railroad within the State of Louisiana shall have been constructed by the company, and the rails laid thereon, the company may deliver to the governor of the State of Louisiana five hundred thousand dollars, or one hundred thousand pounds sterling of such second-mortgage bonds, and the governor shall thereon subscribe a certificate to be written or printed on each of said bonds in the following words: 'The payment of the prin-
309 cipal of the within bond when due, and of the interest thereon when it accrues, is guaranteed by the State of Louisiana, pursuant to the provisions of the act of the general assembly of said State authorizing such guarantee,' and shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the secretary of state, and the bonds shall then be delivered to the company for its general uses and purposes authorized by its charter.

Section 9 provides "that, upon the construction of each additional section or portion of forty miles in length of said main line of railroad within the State of Louisiana, the company may execute and deliver to the governor of the State of Louisiana a further amount of such second-mortgage bonds, equal to twelve thousand five hundred dollars, or two thousand five hundred pounds sterling, as the company may elect, for each and every mile in length of said main line of railroad, and thereupon the governor shall subscribe a certificate of guarantee," &c.

The obligation of the State under the acts of 1869 and 1870, adverted to, was to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company on each section of
310 forty miles "which said company shall construct" within the time mentioned in said acts, after the act of mortgage on said section so constructed shall have been delivered to the governor, approved by him, and recorded in the office of the secretary of state.

This was the subsisting obligation of the State, when the constitutional amendment limiting the State debt to $25,000,000.00 went into operation in November, 1870. As the amount of that limitation had already been reached, the general assembly could not create a debt thereafter.

Notwithstanding the existence of this constitutional limitation, the general assembly passed act 95, approved 20th April, 1871, which provides, section one, "That the governor of this state be, and he is hereby, authorized to subscribe for twenty-five thousand shares, of one thousand dollars each, of the capital stock of said corporation on behalf of this State, and to receive the certificate' of stock therefor as payment shall be made for the same, which certificates shall be deposited by him in the office of the treasurer of the State, and shall not be assignable or transferable except by the authority of the general assembly. That,

whereas the subscription for stock and the issue of bonds therefor,
311 herein provided for, are intended to extinguish the obligation of the

State to endorse or guarantee the second-mortgage bonds of said corporation, under the act of the general assembly, relative to said corporation approved February 21, 1870, and as a discharge of either party from all obligations for the issue, indorsement, guarantee, and security of said mortgage bonds, as provided in the fourth section of said act, the said corporation shall be required, at or before the complete issue of the said bonds, to file with the secretary of state a full release and acquittance of the obligation of the State so created to guarantee said mortgage bonds, and for which the provisions of this act are designed as a substitute and discharge; and the said corporation shall, by its express agreement made and entered into by the vote of its board of directors and attested by its seal and the signature of its secretary, obligate itself to commence that part of its railroad from Vermillionville to Shreveport within six months, and to complete the same within the time limited therefor in the said act of the general assembly."

On the 24th day of April, 1871, four days after the passage of this act, the governor issued to said company bonds of the State amounting to $2,500,000.00, notwithstanding the fact that the railroad from Ver-

millionville to Shreveport had not been located and not a par-
312 ticle of work had been done by said company.

Indeed the record shows that there never has been a survey and location of that branch of the railroad as contemplated by the act, and all the work that has ever been done by said company thereon consists of a ditch 291 feet long, six feet wide, and one and a half deep, proved to be worth $12.00. That is the extent of the labor of said company on the road from Vermillionville to Shreveport after the expiration of five years, the period within which they were required to finish the whole line to Shreveport.

The obligation of the State to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company has lapsed, because the said company failed to complete the first section of forty miles of the main line by the 18th day of January, 1871; they failed to complete any of the other sections of the said main line within three years after the survey and location, and they failed to survey, locate, construct, and put in running order any part of the branch road from Vermillionville to Shreveport within five years, as specified in the said act of 1870.

Under the circumstances, was not the act of April 20th, 1871, and the

issue thereunder by the governor of bonds to the amount of
314 $2,500,000.00, the creation of a debt in contravention of the constitutional limitation then in force? In our opinion it was. When the constitutional limitation went into force, in November, 1870, the State was under an obligation to guarantee second-mortgage bonds on sections of forty miles, if properly completed, on the main line and on the branch line to Shreveport. It was under no obligations to guar-

antee second-mortgage bonds on uncompleted sections or portions of said lines of railroad. If the sections should be completed and the rails laid within the time and manner specified in said acts of 1869 and 1870, and the mortgage to the State should be approved by the governor and registered in the office of the secretary of state, then the State would be under obligations to guarantee said second-mortgage bonds.

The conditions precedent have not happened, the conditional obligations of the State resulting from the legislation of 1869 and 1870 has not ripened into an unconditional obligation; it can never ripen into an unconditional obligation, because the periods within which it might become so by the performance of the conditions by said company have all passed, and the conditional obligation of the State to said com-
315 pany has lapsed. Yet the State is now called upon to discharge the alleged obligation resulting from the issue by the governor under act of 20th April, 1871, of bonds amounting to $2,500,000.00, in contravention of the constitutional amendment then in force.

As there is now no obligation resulting from the acts of 1869 and 1870 in regard to the State guaranteeing second-mortgage bonds of said company, there is no debt due said company or those holding under it. As the bonds in suit do not represent a debt incurred prior to the constitutional amendment, for there was none, they merely evidence a debt contracted since then and in violation of said amendment. Neither the governor nor the general assembly had authority in 1871 to issue $2,500,000.00 of State bonds in payment of a subscription for stock then made, nor had they authority to substitute bonds of the State, unconditional obligations for the conditional obligation arising from the legislation of 1869 and 1870 prior to the happening of the conditions precedent in said acts. As these bonds bear date subsequent to the adoption of the constitutional amendment, all persons acquiring them are charged with notice of the existence and effect of that amendment; they are charged with notice that in 1871 it was not in the power of the
316 general assembly and the governor to bind the State by the issue of these bonds as a substitute for the obligation to endorse the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, because said obligation was conditional, and it could only become binding upon the State upon the happening of the conditions precedent, and they might never happen. The issue of these bonds as a substitute for a debt that did not exist, and that might never exist, was to all intents and purposes the creation of a debt in 1871 in contravention of the constitutional amendment.

It is therefore ordered that the judgment herein perpetuating the injunction and declaring void the bonds issued under act 95 of the acts of 1871, amounting to $2,500,000.00, be affirmed, appellants paying costs of appeal.

Mr. Justice TALIAFERRO concurring:

The bonds were issued without the authority and against the authority of the State which had prohibited the increase of the public debt. The State, through its amendment to the constitution in 1870, peremptorily forbade such issuing. The legislature issued these bonds in violation of the constitutional provision prohibiting an increase of the public debt. The issuing the bonds was an increase of the debt
317 if the payment of them could be enforced. But whatever is done in violation of a prohibitory law is null and can have no effect, (C. 1 C., article 12; 23 An., p. 667; State of La. ex rel. Saml. Smith vs. The State Treasurer.) Ab initio they were null, and no vitality or force could be in-

fused into them by their falling into the hands of third holders. Instruments of the kind have not the essential properties of promissory notes under the law merchant, and even securities of the latter kind are vitiated in the hands of bona-fide holders before maturity and without notice, when the consideration is unlawful. (Parsons on Notes & Bills, vol. 1st, pages 212 & 213.)

I concur in the decree just read.

Dissenting opinion of Mr. Chief Justice Ludeling, May 22d, 1876.

The evidence in this record shows that the intervenors acquired the bonds in question in due course of trade, for value, in good faith and before maturity.

The act No. 26 of the general assembly of 1869, authorized the bonds of the N. O., M. & T. R. R. Co. to be guaranteed by the State on certain conditions. The act No. 31st of the general assembly of 1870
318 authorized bonds of the company to be endorsed for a branch road to Shreveport. Both these acts were enacted before the adoption of the constitutional amendment limiting the State debt. This amendment was ratified by a general election in November, 1870, so that the obligation of the State to endorse the bonds of said company, on certain conditions, existed when the constitutional amendment was adopted. Act No. 95 of the general assembly of 1871 authorized the governor to issue the bonds of the State, in lieu of endorsing the bonds of the company, on condition that the company would release the State from its obligation to endorse and issue certificates of stock of the company to the State for the amount of the State bonds. In other words it authorized the governor to substitute the bonds of the State instead of endorsing bonds of the company to a like amount, if the company would issue to the State certificate' of stock. Certainly this did not create a debt; it was the substitution of one obligation for another, and was not prohibited by the constitution. The debt was the same; the evidence of it was changed. (23 An., 405, 622; 26 An., 561.)
319 But it is said the conditions imposed on the company were not performed before the adoption of the amendment. That fact might be important if the company were claiming the bonds or their payment. But Williams & Guion are innocent third holders of the bonds, which are negotiable in their character, and whether the conditions were performed or not, they had a right to presume that they had been performed, and that the bonds were regularly issued. It seems to me that the rule is universal that where the power to make the obligation exists, and the law under which the bonds are issued authorizes the officers who sign them to execute them, and the bonds purport on their face to have been issued in pursuance of the statute, the bona-fide, third holder is protected, whether the conditions imposed on the party in whose favor the bonds issued have been performed or not. (21 How., 545; 9 Wall., 414; 1 Wall., 93, 393, 297; 5 Wall., 784; 7 Wall., 82, 619; 13 Wall., 297; Pendletonly vs. Annp.)

I therefore dissent from the opinion of the court.

Petition for rehearing.—Filed May 4, 1876.

Supreme court of Louisiana.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, AND ANtoine Dubuclet, State treasurer, Williams & Guion, intervenors. } No. 5768.

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To the honorable the supreme court of Louisiana:

The petition of Williams & Guion, intervenors and appellants in this cause, respectfully shows that there is error to their prejudice in the opinion and decree of your honorable court rendered on the 17 April, 1876, and they pray for a rehearing and assign the following errors:

First. The decision is in direct conflict with the rule as settled in the case of the North Louisiana Railroad bonds, No. 6050 of the docket of this court, case of Matthew Morgan's sons, in which the opinion was delivered by Mr. Justice Taliaferro, and concurred in by Mr. Justice Howell and Mr. Justice Wyly, and with the decision in the matter of the same bonds in 25 Annual, p. 65.

In those cases, by act 108, of 1868, bonds were to be issued to the N. L. & T. R. R. Co. at the rate of $6,000 per mile, but only as each mile was completed, that is, in sections of one mile.

There could be no difference in principle between a section of 40 miles and a section of one mile. In 1872, (long after the limitation by amendment of 1870) by act 97, published at p. 13 of acts of 1873, the

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balance of bonds, $576,000, which would have been exigible if the road were finished from Monroe to Shreveport, and only $6,000 at *at* a time, as the road should be completed, mile by mile, were directed to be issued at once in exchange for stock. In 1873 Gov. Kellogg issued these bonds in exchange for stock. The portion of the road on which they were issued has never been built. The only difference between that case and this is in favor of these petitioners; for petitioners have proved that work was begun on the Shreveport branch of the N. O., Mobile and Texas Railroad within the time fixed by act 95 of 1871, and within fifty-one days thereafter the company had about 25 miles of graded track from Vermillionville to Opelousas, acquired by purchase, but just as good as if acquired by construction.

(See original brief of intervenors, pp. 32 to 40.)

It is respectfully submitted that, if the bonds issued in 1873 to the N. L. & T. R. R. Co., under act 97, approved April 10, 1872, and the said act 97 are not in contravention of the constitutional limitation of Nov., 1870, the bonds held by intervenors issued nearly two years before under act 95 of 1871 are not.

This point was urged on the court, (original brief pp. 39, 40;

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and see 23 A., 405; 25 A., 65,) but seems not to be noticed in the opinions delivered in this case.

In the case 6050, act 97 of 1872 was declared to be "constitutional."

Second. The decision is in direct conflict with that provision of the Constitution of the United States which forbids the impairing of the obligation of contracts by any State. (U. S. Constitution, art. 1, § 10, par. 1.)

Your petitioners, in their intervention at page 26 of the record, in their motion for a new trial at p. 151 of the record, and repeatedly in the argument before your honors, have urged what they submit to be a fact

apparent on the face of the statutes and the bonds in controversy, that the foundation of their contracts with the State is to be found in the act No. 26 of 1869, and act No. 31 of 1870. Both of these acts were passed and accepted prior to the constitutional amendment of November, 1870, whereby the State debt was limited to twenty-five millions of dollars. The bonds in question were issued under the provisions of the act No. 95 of 1871, and about June, 1871, as the act declares, in subs'tution for the obligation created by the act No. 31 of 1870, approved February 21, 1870, which in turn refers back to the act No. 26 of 1869. The fact is emblazoned on the bonds, and your petitioners thereby invited
323 to buy them, as they did, in open market in New York, at the highest market-price then ruling for Louisiana bonds. By your honors' decision, it is respectfully submitted, the constitutional amendment of November, 1870, limiting the State debt is made to impair and destroy the obligation of a contract of the State, whose historical foundation and origin existed prior to that amendment.

If the State had issued a bond on the 21 February 1870, and then in April or June, 1871, had by agreement taken it up and substituted another bond, could it have been properly heard to claim that the latter was an increase of the State debt, as forbidden by the amendment of November, 1871? Surely not. And so your honors have decided in State vs. Graham, 23 Ann., 622.

The illustration applies with full force to the case at bar.

The amendment of Nov., 1870, limiting the State debt, invoked against petitioners, and as applied by your honors, is repugnant to the Constitution of the United States and that it impairs the obligation of the contract of the State herself.

(Davis vs. Gray, 16 Wallace, 204. The cases of the North Louisiana R. R. bonds above cited. Solomon vs. Graham, 23 Ann., 405; State vs. Graham, 23 Ann., 622.)

324 Third. The decision contains errors of fact, and in the interests of truth and justice a rehearing should be granted that they may not be put on record. Your honors say:

"On April 24, 1871, four days after the passage of this act, the governor issued to said company bonds of the State amounting to $2,500,000, notwithstanding the fact that the railroad from Vermillionville to Shreveport has not been located, and not a particle of work has been done by said company.

"Indeed, the record shows that there never has been a survey and location of the railroad as contemplated by the act, and all the work that has ever been done by said company thereon, consists of a ditch 291 feet long, 6 feet wide, and 1½ deep, proved to be worth $12.

"That is the extent of the labor of said company on the road from Vermillionville to Shreveport after the expiration of five years, the period within which they were required to finish the whole line to Shreveport.

"The obligation of the State to guarantee the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company has lapsed, because the said company failed to complete the first section of forty miles of the main line by the 18th day of January, 1871. They failed to complete any of the other sections of the said main line within three years after the survey and location, and they failed to sur-
325 vey, locate, construct, and put in running order any part of the branch road from Vermillionville to Shreveport within five years, as specified in the said act of 1870.

"Under the circumstances was not the act of April 20, 1871, and the issue thereunder by the governor of bonds to the amount of $2,500,000,

the creation of a debt in contravention of the constitutional limitation then in force? In our opinion it was."

We submit—

(1.) The bonds, though dated April 21, 1871, were not issued until about June, 1871; and the first coupon, due July 1, 1871, was not given to the company, but turned in to the auditor. This showed a care for the interests of the State on the part of the then governor.

(2.) The apparent statement that the only work done on the Shreveport branch was the digging of a ditch that cost $12, is one that is erroneous. Passing over the evident mistake involved in the statement that a ditch 291 feet long, 6 feet wide, and 1½ feet deep, can be made for $12, we refer to the affidavits of Bayley and others, and to the fact above alluded to, that within a few days after the work had been formally begun the company had acquired about 25 miles of graded
326 track on the direct line of the branch, namely, from Vermillion to Opelousas. This purchase was made at large expense.

It is proved to have been for the advantage of the largest stockholder, the State.

We respectfully submit that there can be no legal difference between expending money in grading a track from Vermillionville towards Shreveport via Opelousas, and purchasing a track on the same line already graded. If there be any, it is in favor of the action taken by the company, as more economical and more advantageous to the State as chief stockholder.

And petitioners pray for a rehearing and for general relief.

(Signed) KENNARD, HOWE & PRENTISS,
Attorneys for said Intervenors.

Rehearing refused.—Minutes Wednesday May 17, 1876.

The court was duly opened. Present, their honors John T. Ludeling' chief justice, and James G. Taliaferro and Philip H. Morgan, associate justices. Absent, Rufus K. Howell, William G. Wyly, associate justices.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

327 STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, &C., & ANT. DUBUCLET, state treasurer, Williams & Guion, intervenors. } No. 5768.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.—Filed June 1, 1876.

STATE OF LOUISIANA
vs.
CHARLES CLINTON ET AL. } No. 5768.

To the Hon. Joseph P. Bradley, associate justice of the Supreme Court of the United States:

The petition of John S. Williams and William H. Guion, composing the commercial firm of Williams & Guion, of the city of New York, respectfully shows:

That in or about the month of December, 1873, the State of Louisiana,

by her attorney general, filed, in the superior district court for the parish of Orleans, a suit against Charles Clinton, auditor of said State, and Antoine Dubuclet, State treasurer, and obtained therein a preliminary injunction restraining the said defendants from paying any interest on certain bonds issued under the provisions of an act of the legislature of said State known as No. 95 of 1871; approved April 20, 1871,
328 which bonds were so issued to the New Orleans, Mobile and Chattanooga Railroad Company to the amount of twenty-five hundred in all, of one thousand dollars each.

That on its face the said act, No. 95 of 1871, refers back to the contract made by the State with the said railroad company by and in the act No. 31 of 1870, approved February 21, 1870, which, in its turn, refers back to the act No. 26 of 1869, approved February 17, 1869, the said acts of February 17, 1869, and February 21, 1870, forming the basis of the contract evidenced by the said bonds issued under said act 95 of 1871.

That in its said suit of injunction the said State claimed that said bonds were invalidated by the provisions of the amendment to the Constitution of Louisiana, which was adopted in November, 1870, limiting the debt of the State to twenty-five millions of dollars, and this notwithstanding they had been, as aforesaid, authorized by acts passed and contracts made prior to the adoption of said amendment.

That the said railroad company intervened in said suit according to the law and practice of Louisiana, and making itself defendant therein, asked to have said injunction dissolved, and various proceedings were had, which it is not needful to state beyond this reference thereto.
329 That thereafter your petitioners, being the bona-fide holders before maturity of three of said bonds of one thousand dollars each, purchased for full value in open market before said suit had been brought, intervened in said suit according to the law and practice of Louisiana, thus making themselves parties defendant therein, and the cause was tried in said superior district court for the parish of Orleans upon their intervention as well as that of the said railroad company. That in their intervention your petitioners, specially claimed the protection, according to their bonds and the contracts evidenced thereby by the 10th section of the first article of the Constitution of the United States, which forbids a State to pass any law, whether in its legislature or by constitutional convention, which shall impair the obligation of any contract, and especially of its own.

That judgment having been given in favor of the State, making said injunction perpetual and annulling said bonds, petitioner moved in writing for a new trial, and again claimed the protection of said section and article of the Constitution of the United States.

That the new trial being refused, petitioners appealed to the supreme court of the State of Louisiana, and after a hearing therein the said supreme court rendered judgment declaring the said bonds invalidated in the hands of petitioners by the said amendment to the constitution
330 of Louisiana, adopted November, 1870.

That, according to the law and practice of Louisiana, petitioners applied for a rehearing of said cause in said supreme court, and in their written petition again claimed that their said bonds and contracts were protected by the 10th section of the 1st article of the Constitution of the United States, and that the said amendments to the constitution of Louisiana of November, 1870, invoked by plaintiff in the cause and applied by the court, was, as such, invalid and repugnant to the Constitution of the Uni ed States, but the said court refused a rehearing, and

said judgment against petitioner became final on or about the 17th May, 1876.

Petitioners show that in the premises they are entitled to a writ of error to the Supreme Court of the United States, and they pray that the same may be granted by your honor according to law; that citations may be signed, and a bond approved, and for general relief.

(Signed) KENNARD, HOWE & PRENTISS,
Attorneys for Petitioners.

U. S. OF AMERICA, *ss:*

William W. Howe, one of the counsel of Mess. Williams & Guion,
331 (who are absent from this district & State and reside in New York,) being duly sworn, says, on information & belief, that the foregoing petition is true.

(Signed) W. W. HOWE.

Sworn before me May 25, 1876.

(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, District of Louisiana.

I allow a writ of error as prayed in the foregoing petition.
May 25th, 1876.

(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Writ of error.—Filed June 1, 1876.

STATE OF LOUISIANA
vs.
CHARLES CLINTON, AUDITOR, & ANTOINE DUbuclet, treasurer. } No. 5768.

Copy of writ of error lodged in the clerk's office of supreme court of La., in pursuance of the statute in such cases made and provided, this 1st day of June, 1876.

(Signed) KENNARD, HOWE & PRENTISS,
Attys. for Plffs. in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable supreme
332 court of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the State of Louisiana, plaintiff, and Charles Clinton, auditor, &c., and Antoine Dubuclet, treasurer, &c., defendants, and John S. Williams & William H. Guion, composing firm of Williams & Guion, intervenors, and the New Orleans, Mobile & Texas Railroad Company, having also intervened in said case, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such its validity, and wherein was drawn in question the construction of the clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, a manifest error hath happened, to the great damage

of the said Williams & Guion, composed, as aforesaid, of John S. Williams & William H. Guion, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do
333 command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 25 day of May, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

Bond for writ of error.—Filed June 1st, 1876.

STATE OF LOUISIANA
vs.
CHARLES CLINTON & ALS. } No. 5768.

Know all men by these presents that we, John S. Williams &
334 William H. Guion, composing firm of Williams & Guion, as principal, and Thomas H. Hunt, as surety, are held and firmly bound unto the State of Louisiana, Charles Clinton, auditor of public accounts of said State, and to the said auditor and to Antoine Dubuclet, treasurer of said State, and the New Orleans, Mobile & Texas Railroad Company, and to each of them, in the full and just sum of five hundred dollars, to be paid to the said obligees, and to each of them, their and each of their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 25th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately in the supreme court of Louisiana, at New Orleans, in a suit depending in said court, wherein the State of Louisiana was plaintiff and Charles Clinton, auditor, & Antoine Dubuclet, treasurer, &c., were defendants, and the said N. O., Mobile & Texas R. R. Company and the said Williams & Guion were intervenors, making themselves defendants, judgment was rendered against the said Williams & Guion, intervening defendants, and the said Williams & Guion having obtained a writ of error and filed a copy thereof in the clerk's
335 office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana & the other obligees above named, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next:

Now, the condition of the above obligation is such that if the said Williams and Guion shall prosecute their writ to effect and answer all costs

if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN S. WILLIAMS. [L. S.]
WM. H. GUION. [L. S.]
WILLIAMS & GUION,
Per KENNARD, HOWE & PRENTISS, *Attys.*
(Signed) THO. H. HUNT. [L. S.]

Sealed and delivered in the presence of—

U. S. AMERICA, *ss:*

Thomas H. Hunt, who executed the foregoing bond, being duly sworn, says he is worth the sum of one thousand dollars over and above all his debts and liabilities. He resides in New Orleans.

(Signed) THO. H. HUNT.

Sworn to and subscribed before me at the city of New Orleans, this 25th day of May, A. D. 1876.

[SEAL.] (Signed) ALFRED INGRAHAM,
Comr. of the United States.

The above bond is approved.
May 25, 1876.
(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

336 Copy of bond used in supreme court of Louisiana under agreement at page 273 of this record:

$1,000.] UNITED STATES OF AMERICA. [$1,000.
No. 1351.] *State of Louisiana.* [No. 1351.

Know all men by these presents, that the State of Louisiana is indebted to the New Orleans, Mobile and Chattanooga Railroad Company, or bearer, in the sum of one thousand dollars of the lawful money of the United States of America, which the said State promises to pay to the said company or bearer on the first day of July, 1910, with interest at the rate of eight per centum per annum, payable semi-annually, on the first days of January and July of each year, in the city of New York, upon the presentation and surrender of the interest-coupons hereunto attached. For the payment of the said sum of money and the interest thereon at the times and place and in the manner aforesaid, the faith and credit of the State of Louisiana is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the general assembly of said State approved April 20th, 1871, entitled "An act to relieve the State from its obligation to guarantee the second-mortgage bonds," &c., &c.

In testimony whereof, and in pursuance of the act aforesaid, I, Henry C. Warmoth, governor of the State of Louisiana, have hereunto subscribed my name officially and caused this bond to be counter-
337 signed by the secretary of state, and to be sealed with the seal of the State of Louisiana.

Done at the executive department in the city of New Orleans this 24th day of April, A. D. 1871.

{ SEAL OF STATE } (Signed) H. C. WARMOTH,
{ OF LOUISIANA. } *Governor of the State of Louisiana.*
GEO. E. BOVEE,
Secretary of State.

Endorsement of bond.

STATE OF LOUISIANA:

[SEAL OF STATE.]

One-thousand-dollar eight-per-cent. bond, payable 1910, No. 1351.

Interest payable on first days of January and July in each year, in the city of New York.

Extract from the constitution of the State of Louisiana, adopted in convention March 7th, 1868. Article III.

"Whenever the general assembly shall contract a debt exceeding in amount the sum of one hundred thousand dollars, unless in case of war, to repel invasion or suppress insurrection, it shall, in the law creating the debt, provide adequate ways and means for the payment of the current interest, and of the principal when the same shall become
338 due, and the said law shall be irrepealable until principal and interest be fully paid, or unless the repealing law contains some adequate provision for the payment of the principal and interest of the debt."

Extract from an act of the general assemb'y of the State of Louisiana entitled "An act to relieve the State from its obligation to guarantee the second-mortgage bonds," &c., &c.

"SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened, That the governor of this State be, and is hereby, authorized to subscribe for twenty-five thousand shares, of one hundred dollars each, of the capital stock of said corporation, on behalf of this State, and to receive the certificates of stock therefor as payment shall be made for the same, which certificates shall be deposited by him in the office of the treasurer of this State, and shall not be assignable or transferable except by the authority of the general assembly: And be it further enacted, etc., That whereas the subscription for stock and the issue of bonds therefor, herein provided, are intended to extinguish the obligation of the State to endorse or guarantee the second-mortgage bonds of said corporation under the act of the general assembly relative to said corporation, approved Feb. 21st, 1870, and as a discharge of either party from
339 all the obligations for the issue, indorsement, guarantee, and security of said mortgage-bonds, as provided in the fourth section of said act, that the said corporation shall be required, at or before the complete issue of the said bonds, to file with the secretary of state a full release and acquittance of the obligation of the State so created to guarantee said mortgage-bonds, and for which the provisions of this act are designed as a substitute and discharge. * *

"SEC. 2. Be it further enacted, etc., That, for the payment of the said subscription, bonds of this State shall be issued, signed by the governor and secretary of state, and sealed with the seal of the State, payable in not less than thirty-five nor more than forty years from their date, with interest at the rate of eight per cent. per annum, payable semi-annually in the city of New York on the first days of January and July of each year, for which interest-coupons, bearing the fac-simile of the signature of the treasurer of the State, shall be attached to the bonds, and

annually, from and after the issuing of said bonds, or any part thereof, there shall be imposed for each fiscal year a State-tax of one mill on each dollar of the valuation, for each year, of all the real and personal property in this State subject to taxation, which tax shall be as-
340 sessed, levied, and collected in current moneys by the annual assessment and collection of taxes for each year in the manner prescribed by law for the collection of other taxes, and the monies derived therefrom shall, immediately on collection, be paid into the treasury of this State as a distinct fund and kept as a separate account; and such monies, and all monies received from said company for dividends on said stock, shall be applied in each and every year, first, to the payment of the interest as it shall accrue on said bonds, and the balance, in each year, shall be applied to the purchase of said bonds, and such tax shall continue to be assessed, levied, and collected in each and every year, until all the interest and principal of said bonds which shall from time to time remain outstanding shall be fully paid, and all bonds and coupons so purchased and paid shall be immediately cancelled by the said treasurer."

$40.] *Interest-coupon attached to bond.* [$40.

The State of Louisiana will pay forty dollars to the bearer, in the city of New York, on the first day of January, 1873, being semi-annual interest due on bond No. 1351.

(Signed) ANTOINE DUBUCLET,
Treasurer of the State of Louisiana.

341 *Certificate of the clerk.*

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing three hundred and forty (340) pages contain a full, true, and complete copy of the transcript of the proceedings had in the superior district court for the parish of Orleans in a certain suit wherein the State of Louisiana was plaintiff and Charles Clinton, auditor of public accounts, and Antoine Dubuclet, State treasurer, were defendants, and Williams & Guion were intervenors, and also of all the proceedings had in this supreme court on the appeal taken by said intervenors, which appeal is now on the files thereof, under No. 5768.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, and in the hundre'th and first year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

342 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you,

between the State of Louisiana, plaintiff, and Charles Clinton, auditor, &c., and Antoine Dubuclet, treasurer, &c., defendants, and John S. Williams and William H. Guion, composing the firm of Williams & Guion, intervenors, and the New Orleans, Mobile and Texas Railroad Company having also intervened in said case, wherein was drawn in question the validity of a statute of said State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such its validity, and wherein was drawn in question the construction of the clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, a manifest error hath happened, to the great damage of the said Williams & Guion, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 25th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

342½ Citation waived.

J. A. CAMPBELL,
Atto. for N. , M. T. Co.

(Indorsed:) United States circuit court. No. .
versus . Writ of error. Writ of error, of which copy is to be lodged in the clerk's office of supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this day of , one thousand eight hundred and seventy- .
attorney of plaintiff in error. Allowed May 25, 1876. Jos. P. Bradley, asso. justice Sup. Ct. U. S. Filed June 1, 1876. F. McC. Hyman, dy. clerk.

343 UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the State of Louisiana, Charles Clinton, auditor of public accounts of said State, Antoine Dubuclet, State treasurer of said State, and the New Orleans, Mobile and Texas Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, at New Orleans, La., wherein Williams & Guion, composed of John S. Williams and William

H. Guion, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Williams & Guion as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 25th day of May, in the year of our Lord one thousand eight hundred and seventy six.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

344 No. . State of La. vs. Clinton, &c. Superior D. C., No. 369. Citation for returns.

Return.

Recd. June 1, 1876, and on the same day, month, & year I served copies of within citation, &c., on the State of Louisiana, thro' A. P. Field, atty. general; Geo. B. Johnson, auditor, &c., & on Ant. Dubuclet, State treasurer, all in person.

Ret. same day.

Shff.'s fees, $6.00.

EUGENE MESTIER,
Dy. Shff.

Eugene Mestier, deputy sheriff, being duly sworn, deposes and says that all the facts contained in the within return made by him are true.

EUGENE MESTIER,
Dy. Shff.

Sworn to and subscribed before me this 16th day of June, A. D. 1876.

[SEAL.]

T. McC. HYMAN,
Dy. Clerk Supreme Court of Louisiana.

And on June 13, 1876, I served a copy of within citation of error on Chas. Clinton in person.

Retd. same day.

Shff.'s fees, $2.00.

BEN. C. MIRE,
Dy. Shff.

B. C. Mire, depy. sheriff, duly sworn, deposes that all the facts of the within return are true.

BEN. C. MIRE,
Dy. Shff.

Sworn to and subscribed before me this 15th day of June, A. D. 1876.

CHAS. P. JULIAN,
Dy. Clk.

(Indorsement on cover:) No. 757. John S. Williams and William H. Guion, plaintiffs in error, vs. The State of Louisiana, Charles Clinton, auditor, &c., et al. Louisiana sup. court. Filed 6th October, 1876.

FILED
FEB 16 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

JOHN S. WILLIAMS AND WM. H. GUION
vs.
THE STATE OF LOUISIANA.
} No.——

MOTION TO DISMISS.

And now comes the State of Louisiana, the defendant in error, by her counsel, John McEnery, Gus. A. Breaux and James Lingan, and moves the court to dismiss the writ of error herein on the following grounds, viz:

That in the original petition filed by the State of Louisiana, through her attorney general, in the Superior District Court for the parish of Orleans in said State, an injunction was obtained to restrain the auditor and treasurer of said State from issuing or paying or receiving in payment any bond, coupon, warrant, certificate or other writing, calling for the payment or credit of money, in any way connected with or depending upon any of the items complained of or objected to in said petition, on the grounds therein specifically set forth, viz: That said items so set forth, among which were the pretended bonds claimed by plaintiffs in error, issued under the provisions of an act of the Legislature of the State, known as act No. 95 of 1871, were illegally and fraudulently issued, without any consideration, and were absolutely and *ab initio* null and void, because that the conditions precedent, upon the accomplishment of which alone by the New Orleans, Mobile and Chattanooga Railroad Company, the obligation

and liability of the said State should vest and take effect, had never been fulfilled by said railroad company.

That said plaintiffs in error made themselves parties to said suit, by intervention in accordance with the laws of Louisiana, and set up the validity of said bonds, averring that all the requirements of the statutes under which said bonds were issued had been fully complied with. They further averred that they were innocent purchasers without notice of any defects of title or any invalidity in said bonds, and that said bonds constituted in their hands valid contracts between themselves and the State of Louisiana, which said State could not impair, and that they claimed the rights guaranteed to them by the tenth section of the first article of the Constitution of the United States.

And this defendant in error further shows that on the trial of said cause, the said State court decided that, as a matter of fact, the said railroad company never complied with the requirements of the statutes under which said bonds were claimed by said intervenors to have been issued, and that, therefore, the obligations of said State never vested or took effect; that the pretended substitution of the said bonds issued under act No. 95 of 1871 for the contingent obligation of the State to guarantee certain second mortgage bonds in accordance with act No. 26 of 1869, after the failure of the conditions therein stipulated, was an attempt to *create a new debt in violation of the constitutional limits*, and that "because none of the conditions upon which their issue was authorized had or have yet been fulfilled. * * The bonds were stricken with nullity from their birth." They further decided that the plaintiffs in error had no greater rights than the railroad company. The Supreme Court—the highest court of resort in the State—on appeal, maintained and perpetuated the injunction and declared the bonds were null and void; "for," said the court, "as there is now *no obligation* resulting from the acts of 1869 and 1870, * * *there is no debt* due said railroad company *or those holding under them*."—Rec., p. 125.

That the questions presented by the pleadings in the State courts, therefore, were—first, contract, *vel non?* second, could bonds issued in violation of a constitutional prohibition of the State be valid obligations in the hands of "third holders without special notice?. No pretense was made or claimed of impairing an admitted contract.

Now, this defendant in error, in support of this motion to dismiss, further shows that the said issues and the adjudication thereon were manifestly and clearly the controlling and only real issue and adjudication in the cause and against the plaintiffs in error, and was conclusive of all issues therein raised and against the pretensions of plaintiffs in error, intervenors in said cause; that this court is without jurisdiction to review the decision of the Supreme Court of Louisiana upon a question of fact and law growing out of the violation of the constitution of said State by a statute thereof, entirely independent and irrespective of any Federal question requisite to have been decided, and necessarily decided, to give this court jurisdiction under the writ of error herein.

That on the face of the record and in fact no decision by the State courts as to any conflicts between any State statute and section 10 of article 1 of the Federal Constitution was made in this cause, nor was any such decision necessary or pertinent in said cause, in order to determine the rights of plaintiffs in error, or of any of the parties thereto, and hence this honorable court is without jurisdiction in the cause, and the writ of error herein should be dismissed.

UNITED STATES SUPREME COURT.

No. ——.

JOHN S. WILLIAMS AND WM. H. GUION,

PLAINTIFFS IN ERROR,

VS.

THE STATE OF LOUISIANA, CHAS. CLINTON, AUDITOR, ETC., ET ALS.

In error to the Supreme Court of the State of Louisiana.

BRIEF ON MOTION TO DISMISS.

JAMES LINGAN,
JOHN McENERY,
GUS A. BREAUX, } Special Counsel.

J. C. EGAN, Attorney General.

Democrat Print, 62 Camp St.

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STATEMENT OF THE CASE.

By act No. 26 of 1869, and act No. 31 of 1870, the Legislature of Louisiana agreed, that if the New Orleans, Mobile and Chattanooga Railroad Company would make certain surveys, and construct certain sections, and construct, complete and put in running order certain other

prescribed and stipulated portions of a railroad between certain points and places in said State, within certain prescribed times therein specifically set forth, then that the Governor, under certain prescribed conditions, should endorse and guarantee the payment by the State, at certain times and on certain conditions, of certain second mortgage bonds of said railroad company to the extent of not over $12,500 per mile of said completed railroad. On the first Monday in November, 1870, a constitutional amendment was adopted by which it was ordained that, prior to the first day of January, 1890, the State debt shouldnot be so increased as to exceed $25,000,000. By act No. 95 of 1871, the Legislature of the State passed a law which provided that, in lieu of the guarantee by the State of the second mortgage bonds of the said railroad company, as provided in said acts 26 of 1869 and 31 of 1870, above described, the State should subscribe to 25,000 shares of $1000 each of the stock of said company, and in payment therefor should issue the bonds of the State as therein described, for the amount of said subscription, say $2,500,000.

When the prescribed time had elapsed within which the railroad company, as aforesaid, should have completed the surveys and construction of said railroad according to the stipulations, terms and conditions of the said statutes of 1869 and 1870, it was ascertained that said railroad company had entirely failed and neglected to complete said road in accordance therewith, and, indeed, that they had utterly failed even to complete the required surveys, or to *begin* the required construction, according to said conditions.

Under the circumstances, the Attorney General, on be-

half of the State, obtained from the Superior District Court for the parish of Orleans, a writ enjoining and prohibiting the Treasurer or Auditor of the State from paying or crediting, or receiving in payment or credit, any bonds, coupons, warrants or certificates in any manner representing the pretended issue of bonds or coupons to the New Orleans, Mobile and Texas Railroad Company aforesaid, under or by virtue of the act No. 95 of 1871, aforesaid, on various grounds, but specially on the ground that such issue of bonds, etc., was the creation of a new debt since the adoption of the constitutional amendment, and in clear violation thereof.

The injunction referred to comprised various items, numbering thirty-two (32), Nos. 12 and 30 alone being involved in this litigation, and are set forth as follows, viz:

No. 12. "The appropriation in the same act—No. 22 of 1872—of two hundred thousand dollars ($200,000), for interest on the bonds issued to the New Orleans, Mobile and Texas Railroad Company, by virtue of act No. 95 of 1871, in exchange for stock in said railroad company, on all the grounds heretofore generally set up; and further, because said appropriation was a disguised donation of the funds of the State, derived from the people by taxation, for the benefit of a private corporation, and was without any consideration; and further, because the Governor of the State had no right to subscribe for the stock of said company; and because further, that said act No. 95 of 1871 attempted to create a debt exceeding one hundred thousand dollars without providing means in the same act for the payment of the same, and is in violation of article 111 of the constitution of the State."

No. 30. "Any and all bonds, coupons or other certificates upon which demand may be made for warrant, payment or redemption, growing out of the act No. 95, approved April 20, 1871, entitled 'An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company,' etc., on all the grounds hereinbefore generally and specially set up and alleged, and the same are made special grounds against this item, as though fully and particularly here set up and alleged; and specially on all the grounds specially set up against items for works of internal improvements and the guarantee of State aid thereto; and further, *specially because the attempt is made by this act to create a debt of two million five hundred thousand dollars ($2,500,000), when the limit to the State debt of $25,000,000, as fixed by the amendment to the constitution, had been exceeded.*" See Record, pp. 3 and 6-7.

To this petition, and after issuance of the preliminary writ of injunction, the N. O., Mobile and Texas Railroad Company (lately the N. O., Mobile and Chattanooga Railroad Company), a corporation under the laws of Louisiana and Alabama, and domiciled in New Orleans, filed a petition of intervention January 7, 1873, in which they aver: "That intervenor is largely interested in said action and injuriously affected thereby, and especially in the matter set forth in sections (items) Nos. 12 and 30, of said petition, as the said sections in particular will more fully and specifically appear." * * * "That the bonds described in the said petition of plaintiff *issued to intervenor are legal and valid, the requirements of the statutes under which they were issued having been fully complied with. That said bonds were issued according to law, in payment for*

twenty-five thousand shares (of) the capital stock of the intervenors' company, which shares have been fully issued to the State of Louisiana, accepted by said State, and still held and owned by her." The intervenors pray * * "that the said injunction be dissolved so far as any bonds issued to the company of intervenor is concerned, or coupons, and that the said suit be dismissed." Rec., pp. 8-9. These, intervenors also took a rule to dissolve the injunction on the same grounds, which, on the face of the papers, the district court maintained, but which, on appeal, the Supreme Court finally reversed, and remanded to the district court *for the taking of evidence*, the organ of the Supreme Court saying: "*If it be true* that. *at the date of the satd act No. 95, the obligation of the State in favor of the railroad company was extinguished, or had lapsed, the act 95 authorizing the issuance of the bonds in question, was the creation of a new debt;* * * *and we have concluded to remand the case for evidence on the point.*" The above opinion and the decree thereon, was filed and entered upon the minutes of the Supreme Court of the State April 6, 1874. Rec., p. 17.

On April 17, 1874, the State, with leave of court, filed an amended and supplemental answer to the intervention of the N. O., Mobile and Texas Railroad Company, in which she specifically sets forth: That *the conditions* upon which said bonds were claimed and issued *were never complied with* on the part of said company, nor have those conditions since been complied with, and that the issue of said bonds was a fraud upon the State and the people of the State. That the road from Vermilionville to Shreveport, the completion of which formed the basis upon which the bonds were to be issued, has never been com

pleted, nor begun, nor surveyed, even preliminarily, and that the time has long since elapsed in which the line of said road was to have been surveyed, and the construction of said road commenced; that the issuing of said bonds was, by a combination between the officers of said company, receiving them, and officers of the State issuing them, to defraud the State out of the amount of said bonds to the extent of the same, *say two and one-half millions* of dollars. That said bonds, besides being a *fraud upon the State*, were for no consideration whatever, either present or prospective, but were purely and simply a disguised donation; that the pretended certificates of stock for 25,000 shares was utterly worthless, and purports to be for stock in a company which never had any stock nor any capital, but was trading and doing business on credit at the time said certificate was issued, was utterly bankrupt, and wholly incapable of performing any of its obligations; that the plaintiff utterly denies any validity to the transaction for the exchange of said $2,500,000 of bonds for the certificate of twenty-five thousand shares of stock, and tenders a return of said certificate, and demands the return and cancellation of said bonds and a decree of their nullity." In conclusion, the State prays the court in reconvention against said railroad company, "that there be judgment decreeing the $2,500,000 of bonds with all the coupons attached, issued to the N. O., Mobile and Texas Railroad Company, under act No. 95 of 1871, *fraudulent*, issued in violation of the constitution, without consideration, and absolutely null and void, and for costs and general relief." Record, p. 27.

At this stage of the case, Messrs. Williams & Guion, the plaintiffs in error before this honorable court, file

their petition of intervention on the 3d of November, 1874, Rec., pp. 29 and 30, as follows, viz:

SUPERIOR DISTRICT COURT, PARISH OF ORLEANS.

The State, etc.,
vs.
Chas. Clinton, etc. } No. 369.

To the Hon. J. Hawkins, Judge:

The petition of intervention of Williams & Guion, a commercial firm domiciled in the city of New York, composed of John S. Williams and William H. Guion, of said city of New York, respectfully shows:

That petitioners are the lawful owners and holders for value and before maturity of three bonds of the State of Louisiana, issued by State under act No. 95 of 1871, and described in the petition of the plaintiff in paragraphs Nos. 12 and 30 thereof, being Nos. 1351, 1352 and 1353 of said issue. Said bonds are dated April 24, 1871, payable to bearer, due in the year 1910, each for $1000, and with coupons as prescribed by law. That your petitioners purchased said bonds in open market, on or about the first of July, 1872, in good faith, paying 71 cents on the dollar, in full reliance on the contract and promises contained in and evidenced by said bonds, and without any notice or knowledge of any fact going to affect the validity thereof.

That petitioners have a legal interest in this suit to the amount of $3000 and interest accrued and the right to intervene herein, and as holders of said bonds to assert their validity in petitioners' hands. That said bonds from

the time they were purchased by your petitioners have constituted valid contracts between your petitioners and the State of Louisiana, which the said State has no right in any wise to impair, and your petitioners assert and claim herein, the rights guaranteed to them by the tenth section of the first article of the constitution of the United States, forbidding the impairing by the said State of said contracts,

That petititioners are entitled in law and equity to have the injunction which has been issued herein dissolved as to their said bonds.

Wherefore petitioners pray that this petition may be filed, and the parties hereto notified according to law; that judgment may be rendered herein, dissolving the injunction herein as to the bonds of petitioners, and that such other and further judgment may be rendered as may be just and equitable in view of the facts of the case.

(Signed) KENNARD, HOWE & PRENTISS,

Attorneys for Intervenors.

The State (Record, p. 33), files a general denial to this; "and specially does this respondent deny that the parties acquired said bonds as innocent third parties, in good faith and for a valuable consideration, without notice, *for*, no person who deals in State securities can plead ignorance of the State laws and the condition of public works done under and by virtue of the provisions of such laws in the purchase of obligations of the State, based on the faithful compliance with the conditions thereof. That no consideration was ever given the State for said bonds to the full knowledge of the holders." Respondent adopts

further the answer filed to the intervention of the N. O., Mobile and Texas R. R. Co., and prays judgment against said Williams & Guion, decreeing said bonds to be illegal, null and void, and that they be ordered to be returned to the State.

After taking certain testimony under commission, the N. O., M. and T. R. R. Co., *disclaiming any interest in the suit*, moved the court for leave to discontinue their intervention, which the court refused.

On these pleadings, and on evidence taken to show the non-compliance by the railroad company with the terms and conditions of the statutes of 1869 and 1870, the case was argued and submitted on the whole merits.

The court maintained and perpetuated the injunction on all points, and decreed the bonds "be declared null and void."

The railroad company acquiesced in the judgment of the district court, and did not join in the appeal to the Supreme Court of the State, nor in the writ of error to this court. The Supreme Court reviewed at length the statutes of 1869 and 1870, the evidence of non-compliance by the railroad company with the conditions and requirements of those statutes, and *without touching a question under the judiciary act*, said:

Record, p. 123. "The obligations of the State under the acts of 1869 and 1870 adverted to, was to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company on each section of forty miles, *which said company shall construct within the time mentioned in said acts*, after the act of mortgage on said section so constructed shall have been delivered to the Governor, approved by him, and recorded in the

office of the Secretary of State. *This was the subsisting obligation* of the State when the constitutional amendment limiting the State debt to $25,000.000 went into operation in November, 1870. As the amount of that limitation had already been reached, the General Assembly could not create a debt thereafter." Again, p. 125: "If the sections should be completed and the rail laid within the time and manner specified in said acts of 1869 and 1870, and the mortgage to the State should be approved by the Governor, and registered in the office of the Secretary of State, *then* the State would be under obligations to guarantee said second mortgage bonds. The *conditions precedent have not happened;* the *conditional obligations* of the State, resulting from the legislation of 1869 and 1870, has not yet ripened into an *unconditional* obligation; *it can never ripen into an unconditional obligation*, because the periods within which it might become so by the performance of the conditions by said company have all passed, and *the conditional obligation of the State to said company has lapsed.*"

Once more, p. 125, the court says, in conclusion: "The issue of these bonds *as a substitute for a debt that did not exist*, and that might never exist, was, to all intents and purposes, *the creation of a new debt* in 1871, in contravention of the constitutional amendment."

ARGUMENT.

We have thus given at length the pleadings in the case and extracts from the decisions of the State courts in order that the whole case might appear fully before your Honors, to the end that the utter lack of jurisdictional points might be manifest and thus enable the court at

once to clear from its crowded docket a case thus improperly brought before it.

Several references have been found in the record where the plaintiffs in error in their applications for *rehearings* in the District and Supreme Courts, have, *arguendo*, suggested that they were "protected in the premises by" and the "decisions of the State courts were in conflict with" the "provision of the constitution of the United States, forbidding the State to impair the obligations of contracts;" but the sole and only *plea* on which any *real issue* can be justly said to have been made in this case, is in their petition of intervention, as follows, viz:

"That said bonds, from the time they were purchased by your petitioners, have constituted valid contracts between your petitioners and the State of Louisiana, which the said State has no right in any way to impair, and your petitioners assert and claim herein the rights guaranteed to them by the tenth section of the first article of the constitution of the United States, forbidding the impairing by the said State of said contracts."

We are unable to discover in this somewhat loose phraseology any averment that comes within the twenty-fifth section of the act of 1789, and we submit that the plea is insufficient, vague and void for uncertainty, and cannot stand to give jurisdiction to this honorable court. This intervention does not state *what* statute or constitutional provision of the State, or that any or either, violate the tenth section of article first of the constitution of the United States. It does not state *what*, or that any, special statutory or constitutional provision of the State impairs their pretended contract, nor do they ask that any particular statutory or constitutional provision of the State be

declared null and void on account of said conflict. Their whole plea is a square issue on the facts and law of the case under the exclusive jurisdiction of the State court. They assert in the previous paragraphs of their intervention (Rec., p. 30), the *validity* of the issue of bonds under act 95 of 1871, their good faith as holders and owners, and pray—not that a certain statute or constitutional provision of the State be declared null and void, because it is in violation of a certain provision of the constitution of the United States, but they pray "that judgment may be rendered herein, dissolving the injunction herein as to the bonds of petitioners."

Under the most liberal construction of this somewhat cloudy plea, all that can be drawn from it is, that plaintiffs in error assert therein that they have a *valid* contract with the State of Louisiana, represented by the bonds enjoined, and that their rights under said contract are guaranteed to them by section 10, article 1, of the Federal constitution. There was no question by the State as to the guarantee of *valid contracts*, but the whole issue in the case grew out of the first proposition. The issue was simply *contract. vel non*. It was an issue raised by themselves when they interjected themselves into this litigation, and it was decided against them. *Hincillæ lachrymæ.*

We conclude, therefore, that your Honors must dismiss this writ of error; first—for want of proper averments; and second, because on the face of the record no case of jurisdiction is shown under the 25th section of the judiciary act of 1789.

FIRST—NO NECESSARY AVERMENTS.

In general phraseology, the plea of plaintiffs in error

is, that they are "protected in the premises," and "their rights guaranteed to them" by section 10, article 1, of the Federal constitution—which ordains that no State shall "pass any law impairing the obligations of contracts." Your Honors have frequently decided that it is necessary in order to vest this court with jurisdiction, under the judiciary act—First, that a Federal question must be distinctly *presented on the face of the pleadings*. Second, that it must be *necessarily involved* in the decision of the case; and third, that such a question must actually and *absolutely have been decided* by the State court of last resort.

Says the court: "It is not enough that some one of the questions stated in the 25th section of the judiciary act might have arisen, or been applicable, *it must appear* that it *did arise*, and *was applied*." 10 Peters, 368; 12 Pet., 507; 13 Pet., 157; 14 Pet., 56; 15 Pet., 18; 5 How., 317; 18 How., 511; 4 Wall., 177; 21 Wall., 638; 92 U. S., 327 98 U. S., 140.

Now we have seen from the judgment itself, that in fact the State courts *did not decide any Federal question*. The decision in no word refers to the Federal constitution, nor to a Federal statute or treaty. It does not even suggest or refer to any such conflict as having arisen in, or as having been therein suggested, or as being necessary or pertinent to the issues presented or the conclusions reached in the case. The court, on the facts found, said: "Even if there was no constitutional limitation of the public debt of the State at the time these bonds were issued, still they, and every one of them, are null and void, *because none of the conditions upon which their issue was authorized had, or has yet been fulfilled*." Rec. p. 81.

SECOND—NO CASE OF JURISDICTION EXISTS ON THE FACE OF THE RECORD.

In November, 1870, the people of Louisiana adopted an amendment to the constitution of the State in the following words: "That prior to the first day of January, 1890, *the State debt shall not be so increased as to exceed twenty-five millions of dollars.*" It requires no argument to demonstrate that this provision did not, and could not be construed to invalidate or impair any obligations of contracts *existing at the time of its adoption.*

It is equally clear, that *the limit of $25,000,000, having been reached*, any statute of the State passed subsequent to the adoption of the above constitutional amendment by which the State debt should be increased, would be null and void, and that purchasers of State bonds or warrants issued under a statute dated after November, 1870. and in disregard or ignorance of this constitutional prohibition must do so at their peril.

The Federal constitution or the Federal courts cannot be invoked to "protect" or "guarantee" such transactions.

Now the whole purpose and object of the injunction suit in the district court of the State was to prevent the Auditor and Treasurer of the State from recognizing, auditing, paying or receiving in payment any of certain bonds, coupons, certificates or other evidence of State indebtedness that had been issued under any statute passed after, and hence in violation of this constitutional provision of the State. The real issue, therefore, before the State courts was, whether or not the "act No. 95 of 1871," under which plaintiffs' bonds were issued *was or was not passed in violation of the State constitution*, as amended. The State courts decided that the bonds were void *ab ini-*

tio because the limit of State debt had been already reached prior to the passage of "act No. 95 of 1871."

In the language of the Supreme Court, already quoted, "The issue of these bonds *as a substitute for a debt that did not exist*, and that might never exist, was to all intents and purposes, the creation of a debt in 1871 in contravention of the constitutional amendment." That this court has no jurisdiction over such a question under the judiciary act, was decided in the case of Jackson vs. Lampshire as far back as 3 Peters, p. 280.

Nor do plaintiffs in error improve their condition or status, when they attempt to draw validity to the act No. 95 of 1871, by the assertion in their petition for a writ of error, "that on its face the said act No. 95 of 1871, refers back to the contract made by the State with the railroad company by and in the act No. 31 of 1870, approved February 21, 1870, which, in its turn, refers to the act No. 26 of 1869, approved February 17, 1869, the said acts of February 17, 1869, and February 31, 1870, *forming the basis of the contract evidenced by the bonds issued under said act No. 95 of 1871.*" This suggestion in petition for writ *as a plea* comes too late. See 1 How., 192.

The "railroad company," referred to was the creature of the State and domiciled in New Orleans; whatever disputes growing out of contracts existing between that corporation and the State of Louisiana might arise could certainly be finally determined by the courts of the State. Now when this railroad company intervened in this litigation, they placed themselves on record as being "largely interested," and as appearing to vindicate the validity and legality of these bonds, and as prepared to show that "the requirements of the statutes under which they were

issued," had "been fully complied with." Rec., p. 9. But after the Attorney General of the State in answer to their intervention had charged that "*the issuing of said bonds was by a combination between the officers of said compny receiving them, and the officers of the State issuing them, to defraud the State out of the amount of said bonds,*" this virtuous corporation having in vain tried to discontinue their intervention, without disproving the charge of combination to defraud the State, has quietly acquiesced in the judgment of the Superior District Court, taking no appeal therefrom, and has entirely faded out of the case, leaving the "innocent third parties without notice" to fight the equitable and legal rights of the bond holders.

Now, it appears from the record, that the requirements of the statutes of 1869 and 1870, "*forming the basis of the contract evidenced by the bonds issued,*" as the plaintiffs in error allege, have never been complied with. In the language of the Supreme Court of the State: "*The obligation of the State* to guarantee the second mortgage bonds of the N. O., Mobile and Chattanooga Railroad Company, *has lapsed*, because the said *company failed* to complete the first section of forty miles of the main line by the eighteen day of January, 1871; *they failed* to complete any of the other seetions of said main line within three years after the survey and location, and *they failed* to survey, locate, construct and put in running order any part of the branch road from Vermilionville to Shreveport within five years, as specified in the said act of 1870." Rec., p. 124.

Thus it appears that the issue of fact as to the compliance with the requirements of the statutes of 1869 and 1870, which the plaintiffs in error themselves assert was

"*the basis of the contract* evidenced by the bonds issued," was invoked by intervernors and decided flatly against them.

The only "invalidation" or impairing of their contract, obligations or rights, therefore, is shown to have been brought about by their own laches and neglect. "The requirements of the statutes" of 1869 and 1870, were the performance of certain acts within a certian time. These acts were entirely within their power and option to perform within the time specified. The intervenors failed to perform "the requirements of the statutes" under which the bonds were issued, and hence the obligation of the States, which was contingent upon the performance of those requirements, as conditions precedent, lapsed.

It was, therefore, the non-performance of *their part of the contract* that "*impaired* the obligation," and *not any statute* or constitutional provision of the State of Louisiana. It was on these issues and on these facts, that the State courts declared the contract under the acts of 1869 and 1870, invalidated and void.

This court has frequently refused to take jurisdiction in such cases. Ten years ago in Knox vs. Exchange Bank, 12 Wall., 383, your Honors said: "But we are not authorized by the judiciary act to review the judgments of the State courts because their judgments refuse to give effect to valid contracts, or because those judgments in their effects impair the obligation of contracts. If we did, every case decided in a State court could be brought here when the party setting up a contract alleged that the court had taken a different view of its obligation to that which he held. As this court said in Railroad Company vs. Rock, (4 Wall., 181, and R. R. Co. vs. McClure,

10 Wall., p. 41)—"*it must be the constitution or statute of the State which impairs the obligation of a contract, or the case does not come within our jurisdiction.*"

In the case quoted the court refused jurisdiction when a *valid contract* had been *invalidated* by the State court, while it is clear that, in the case at bar the contract had been destroyed by the laches of the plaintiffs in error. In 12 Wall., p. 445, this court said: "Where there was an adjudication *upon the meaning of an agreement and not one upon the construction of the statute* a writ of error will not lie. People vs. Railroad. It is, therefore, conclusive that no Federal question was seriously raised, none actually existed, and certainly none was decided in this case, and the writ of error should be dismissed with costs.

Of course, "the conditional obligation of the State towards the railroad company having lapsed from the failure of the company to 'fulfill the requirements of the statutes," as we have seen, the issue of bonds under the said act No. 95 can draw no vitality from the acts of 1869 and 1870, but must stand exclusively upon that statute for their validity. But the limit of the State debt having been reached in 1870 or before, the act 95 creating a new debt was in contravention of the State constitution, and void. Indeed, this very point has been passed upon by this court in a similar case from the State of Louisiana, under this identical amendment of the constitution of that State, and it was held a State, and not a Federal question, and that a writ of error would not lie. Solomons vs. Graham, 15 Wall., 208. See also 18 H., 192, Heirs of Poydras vs. Treasurer of Louisiana, where the court held that the suggestion in a petition for rehearing

that the *judgment of a court* violates a certain provision of the constitution of the United States, was not sufficient to support a writ of error under the 25th section of the judiciary act. Moreover, the real point behind all questions of law involved is the *question of fact* as to the fulfillment by the railroad company of the conditions on which the promise of State aid was alone promised. This the State courts have found to be against the intervenors, and this court has determined against its jurisdiction to review such questions in both early and very recent cases.

"Our power is restricted by the constitution to the determination of the questions of law arising upon the record. Our authority does not extend to the re-examination of facts which have been tried by the jury under instructions correctly defining the legal rights of parties." 3 Peters, 446; 21 How., 167; 18 Wall., 249; 10th Otto, p. 31.

Notwithstanding all this, the petition for a writ of error herein asserts that "the said Supreme Court rendered judgment declaring the said bonds invalidated in the hands of petitioners by the said amendment to the constitution of Louisiana, adopted November, 1870."

If this were true, even to the desperate length of construction to which such interpretation would lead, we have seen that "*because those judgments* (of State courts) *in their effect impair the obligations of contracts*, (12 Wall., 383); they cannot, therefore, be reviewed by this court. But, of course, the Supreme Court declared no such thing, and the counsel have, of course unintentionally, overstated their case. Bonds that were shown and declared to *have been* issued in *violation of a constitutional*

prohibition, and therefore void *ab initio*, could not have been declared *invalidated* by the constitution that antidated their issue.

The court said (p. 81), "the bonds were *stricken with nullity at their birth.*" If a child be born blind, one could not be arraigned before court for impairing its eye sight. Neither can a decision or a statute or a constitutional amendment, be said to "invalidate" bonds, that were "stricken with nullity at their birth." Moreover the intervenors, Williams & Guion, allege that they purchased these bonds about July 1, 1872, *twenty months* after the constitutional prohibition, and fourteen months after their illegal issue under act No. 95 aforesaid, and they "made no enquiries" to ascertain their validity. Such gross negligence, or such touching child-like and unsophisticated confidence in Southern Legislatures, on the part of New York stock jobbers, brings its own cruel penalty. On this point the District court said: "There is no such party as 'third holders' so far as the maker of the bonds is concerned." See Diamond vs. Lawrence County, 37 Penn. State R., p. 353; Stairn vs. Town of Genoa, 23 N. Y., 440; 7 Wall, p. 666; 22 How., N. S. Rep., 365. "Third holders of such bonds stand precisely on the same ground as the first holder or original payee." Rec. pp. 80, 81. And the Supreme court say: "As these bonds bear date subsequent to the adoption of the constitutional amendment, all persons acquiring them are charged with notice of the existence and effect of that amendment." And again, "*ab initio*, they were null, and no vitality or force could be infused into them by their falling into the hands of third holders." Rec., pp. 125 and 126.

The record, on its face, is conclusive that at the date of the adoption of the constitutional amendment, there was no valid or subsisting contract, absolute or conditional, between said State of Louisiana and the plaintiffs in error, or between the State and the New Orleans, Mobile and Texas Railroad Company, and hence, no contract existing—there could be none impaired by said amendment. This was all that the State Courts decided. It was all that the pleadings and proof permitted to be decided. And by no ingenuity of counsel, or dire necessity litigants can that constitutional provision be so tortured by construction, so as to give it any *retroactive* application or effect, so as to bring it into conflict with the provisions of the Federal constitution and thus give his court jurisdiction in this proceeding. We ask that the writ of error be dismissed.

Respectfully submitted,

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J. C. EGAN, Attorney General.

No. 7. October Sessions, 1880.

Supreme Court of the United States.

LOUISIANA BOND CASES UNDER ACTS OF 1869, 1870, AND 1871.

JOHN S. WILLIAMS AND WILLIAM H. GUION, PLAINTIFFS IN ERROR (INTERVENORS BELOW IN THE CASE OF THE STATE OF LOUISIANA AGAINST CLINTON, STATE AUDITOR, AND DUBUCLET, STATE TREASURER),

vs.

THE STATE OF LOUISIANA; CLINTON, STATE AUDITOR; AND DUBUCLET, STATE TREASURER, DEFENDANTS IN ERROR (PETITIONERS BELOW).

Error to the Supreme Court of the State of Louisiana.

BRIEF OF THE PLAINTIFFS IN ERROR ON MOTION TO DISMISS FOR WANT OF JURISDICTION.

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I.

Statement of the Issue and Point decided by the Supreme Court of Louisiana.

The material pleadings and decrees, &c., as shown by the record, may be summarized as follows:—

A petition was filed by the State of Louisiana against the State Auditor and Treasurer, to restrain them, *inter alia*, from paying or receiving in payment any bond or coupon of the issue under the Act of that State, No. 95 of April 20th, 1871, to the New Orleans, Mobile and Texas Railroad Company, on the ground that said obligations were unconstitutionally issued, and were held with notice and without consideration.[1] Dec. 31st, 1872.

Injunction awarded according to the prayer of the petition.[2] Ex dia.

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[1] 1–8. The numerals in the notes to this argument refer to the pages of the record. The only parts of the petition material in this case are paragraphs 12 and 30, pages 3 and 7, and the concluding general averments and prayers, pages 7 and 8.

The State Constitution of 1868 was amended in November, 1870, as follows:—

Amend. 3d. "That prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed 25,000,000 of dollars." (See record 1, 68.)

[2] 22. This injunction was afterwards (February 4th, 1873) modified by the judge who had issued it, so as to dissolve it, so far as the bonds in question were concerned (12). An appeal was then taken by the State against the modifying order, and the judgment was affirmed (15–16) by the Supreme Court (May 23d, 1873.) A re-hearing was afterwards granted, and the Supreme Court set aside their first decree, and entered a decree (April 6th, 1874) reversing the decree of the court below (which had dissolved the injunction as to these bonds) (17–18.) The effect of the last decree of the Supreme Court was, of course, to renew the injunction originally issued in the court below (December 31st, 1872) restraining the State Auditor and Treasurer, *inter alia*, from paying or receiving in payment any of the bonds, or their coupons, in controversy. It is this re-instated injunction of December 31st, 1872 (22) with which we are alone

Jan. 7th, 1873. The New Orleans, Mobile and Texas Railroad filed (a petition of intervention, which was in reality) their answer to the petition of the State, denying the allegations thereof, and averring, *inter alia*, that said bonds of the State of Louisiana had been lawfully issued for a valuable consideration.[1]

Jan. 23d, 1873. April 17th, 1874. The State of Louisiana filed (their answer[2] and amended answer[3] to the intervention of the New Orleans, Mobile and Texas Railroad Company, which answers were substantially) a replication,

Denying that the said bonds of the State of Louisiana had been issued in good faith to the said company, or that they were issued for a valuable consideration; and

Alleging that they were unconstitutionally issued in violation of the prior State amendment (ratified in November and promulgated December 15th, 1870.)

Nov. 3d, 1874. The present plaintiffs in error intervened, alleging in their petition[4]

(1.) That they were lawful holders for value of several of the said bonds of the State of Louisiana issued under said act No. 95 of 20th April, 1871, which bonds they had purchased about July 1st, 1872, in open market in

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concerned, *and not that of October 17th, 1873*, (24–5) which affected *guaranteed* bonds, of which the guarantee was made by act No. *94*, approved April *18*th, 1871 (24.) This last injunction was granted upon the supplemental petition of the State of Louisiana, (record 23-4) which referred to bonds of the railroad company only, alleged to have been *guaranteed* by the State by the Act No. *94*, of April *18*th, 1871. This supplemental petition and injunction do not concern us, our title being in no way connected therewith.

The bonds in this suit are not bonds of the New Orleans, Mobile and Texas Railroad Company, *guaranteed by the State, but are bonds of the State of Louisiana*, issued to this company, under act No. *95*, of April 20th, 1871, and negotiated by the company in New York.

[1] 8–9.
[2] 10.
[3] 26–7.
[4] 29–30.

New York, in good faith, without notice, or knowledge, of any fact affecting their validity, and *upon the faith of the contract and promises contained in and evidenced* by said bonds.

(2.) "That said bonds constitute valid contracts between [the] petitioners and the State of Louisiana, which the said State had no right in any wise to impair, and [the] petitioners

"*Assert and claim herein the rights guaranteed to them by the tenth section of the first article of the Constitution of the United States, forbidding the impairing by the said State of said contracts.*"

(3.) They therefore prayed that the injunction[1] granted might be dissolved.

The answer[2] of the State to the intervention of the plaintiffs in error, was filed, Nov. 18th, 1876.

Denying all the allegations in the petition of intervention, and

Reasserting as part of the said answer, their answer to the petition of intervention of the New Orleans, Mobile and Texas Railroad Company (*ante* 2).

No replication was filed to this answer, for by the Code of Louisiana, all allegations and new facts in the answer are considered as denied.[3]

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[1] The injunction referred to in this prayer was the original injunction of December 31st, 1872, dissolved as to these bonds, but afterwards reinstated by the decree of the Supreme Court of the State (April 6th, 1874). See note[3] *ante* 1.

[2] 33.

[3] By the practice of Louisiana all matters alleged in the answer are open "to every objection of law and fact, the same as if specially pleaded." See Stewart *vs.* Kahn, 11 Wallace, 494.

"When the defendant in his answer alleges on his part new facts, these shall be considered as denied by the plaintiff, therefore neither replication nor rejoinder shall be admitted." Code of La. See Stewart *vs.* Kahn, *supra*.

Jan. 14-18th, 1875. The case was heard upon depositions and oral evidence.[1]

Jan. 23d, 1875. A decree[2] was entered, making perpetual the original preliminary injunction of December 31st, 1872, and declaring that the bonds of the State of Louisiana, issued under Act No. 95 of April 20th, 1871, were null and void.

The case was then taken by appeal to the Supreme Court of Louisiana.

April 17th, 1876. Decree[3] entered by the Supreme Court affirming the decree of the court below.

May 4th, 1876. A petition for a rehearing[4] was filed in the Supreme Court by the plaintiffs in error; setting forth—

(*a*) That the decision was in conflict with the law as settled by prior decisions.

(*b*) "*Second.* The decision is in direct conflict with the provision of the Constitution of the United States, which forbids the impairing of the obligation of contracts by any State. (U. S. Constitution, Art. I. section 10, par. 1.)

"Your petitioners, in their intervention, at pages [29-30] of the record, in their motion for a new trial, at pages [82-3] of the record, and repeatedly in the argument before your Honors, have urged what they submit to be a fact apparent on the face of the statutes and the bonds in controversy, that the foundation of their contracts with the State is to be found in the act, No. 26 of 1869, and act No. 31 of 1870. Both of these acts were passed and accepted prior to the constitutional amendment of November, 1870, whereby the State debt was limited to $25,000,000. The bonds in question were issued under the provisions of the act No. 95 of 1871,

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[1] 78.

[2] 81.

[3] 121. The decree reads:—

"It is ordered that the judgment herein, perpetuating the injunction, and declaring void the bonds under act 95 of the Acts of 1871, amounting to $2,500,000, be affirmed, appellants paying costs of appeal. (The Chief Justice dissents, and reserves the right to file his reasons hereafter.)

"For the reasons assigned in the written opinion, this day read in court. Mr. Justice Taliaferro, concurs in the decree just read."

[4] 127. The petition for a rehearing is a matter of right, and forms part of the record, being *a pleading* in the Supreme Court (La. Code of Practice, Art. 912). See Stewart *vs.* Kahn, 11 Wall.

about June, 1871, and, as the act declares, in substitution for the obligation created by the act No. 31 of 1870, approved February 21st, 1870, which in turn refers back to the act No. 26 of 1869. The fact is emblazoned on the bonds, and your petitioners thereby invited to buy them, as they did in open market in New York, at the highest market-price then ruling for Louisiana bonds. *By your Honors' decision, it is respectfully submitted, the constitutional amendment of November, 1870, limiting the State debt, is made to impair and destroy the obligation of a contract of the State, whose historical foundation and origin existed prior to that amendment.*

"If the State had issued a bond on the 21st February, 1870, and then, in April or June, 1871, had by agreement taken it up and substituted another bond, could it have been properly heard to claim that the latter was an increase of the State debt, as forbidden by the amendment of November, 1871? Surely not. And so your Honors have decided in State *vs.* Graham, 23 La. Ann., 622.

"The illustration applies with full force to the case at bar.

"*The amendment of November, 1870, limiting the State debt, invoked against the petitioners, and as applied by your Honors, is repugnant to the Constitution of the United States in that it impairs the obligation of the contract of the State herself.*

"(Davis *vs.* Gray, 16 Wallace, 204. The cases of the North Louisiana R. R. bonds above cited. Solomon *vs.* Graham, 23 Ann., 405; State *vs.* Graham, 23 La. Ann., 622.)"

(*c.*) The decision was erroneous in various matters of fact therein specified.

The petition for a rehearing was refused. May 17th, 1876.

II.

Argument on the Motion to dismiss for Want of Jurisdiction.

The question is whether a Federal question is raised on the record by the decision of the Supreme Court of Louisiana, so that this court has jurisdiction to review that judgment.

1. The record shows that the only point decided by the Supreme Court, was as follows:—

That the title of the intervenors, Williams & Guion, depended solely upon the act of

April 20th, 1871, prior to which their title had no foundation; and as that act created a new debt, forbidden by the prior constitutional amendment of 15th December, 1870, their title was not protected by article 1, section 10, paragraph 1 of the Constitution of the United States, forbidding the passage by a State of any law impairing the obligation of a contract.

This appears:—

(1.) From the pleadings, viz., the petition of intervention of Williams & Guion and the answer thereto, of the State of Louisiana (*ante* 2–3).

(2.) From the opinions delivered in the Supreme Court, which, in cases from Louisiana, form part of the record.[1]

Extract from the opinion of the Supreme Court of Louisiania (per WYLY, J.):—

"Under the circumstances, *was not the act of April 20th, 1871, and the issue thereunder by the Governor of bonds to the amount of* $2,500,000 *the creation of a debt in contravention of the constitutional limitation then in force? In our opinion it was. When the constitutional limitation went into force, in November, 1870, the State was under an obligation to guarantee second mortgage bonds on sections of forty miles, if properly completed on the main line and on the branch line to Shreveport.* It was under no obligation to guarantee second mortgage bonds on uncompleted sections or portions of said lines of the road. If the sections should be completed and the rails laid within the time and manner specified in said acts of 1869 and 1870, and the mortgage to the State should be approved by the Governor, and registered in the office of the Secretary of State, *then the State would be under obligation to guarantee said second mortgage bonds.*

[1] Stewart *vs.* Kahn, 11 Wallace, 495, 499, 502; Murdock *vs.* City of Memphis, 20 Wallace, 633, citing Grand Gulf Railroad Company *vs.* Marshall, 12 Howard, 165; Cousin *vs.* Blanc's Executor, 19 *Id.*, 202.

"The conditions precedent have not happened; the conditional obligation of the State resulting from the legislation of 1869 and 1870 has not ripened into an unconditional obligation; it can never ripen into an unconditional obligation, because the period within which it might become so by the performance of the conditions by said company have all passed, and the conditional obligation of the State to said company has lapsed. Yet the State is now called upon to discharge the alleged obligation resulting from the issue by the Governor, under act of 20th April, 1871, of bonds amounting to $2,500,000, *in contravention of the constitutional amendment then in force.*"

"As there is now no obligation resulting *from the Acts of 1869 and 1870, [both passed prior to Constitutional Amendment of 1870]* in regard to the State guaranteeing second-mortgage bonds of said company, *there is no debt due said company or those holding under it.* AS THE BONDS IN SUIT DO NOT REPRESENT A DEBT INCURRED PRIOR TO THE CONSTITUTIONAL AMENDMENT, *for there was none,* THEY MERELY EVIDENCE A DEBT CONTRACTED SINCE THEN AND IN VIOLATION OF SAID AMENDMENT. Neither the Governor nor the General Assembly had authority in 1871 to issue $2,500,000 of State bonds, in payment of a subscription for stock then made, NOR HAD THEY AUTHORITY TO SUBSTITUTE BONDS OF THE STATE, unconditional obligations, *for the conditional obligation arising* FROM THE LEGISLATION OF 1869 AND 1870, prior to the happening of the conditions precedent in said acts. *As these bonds bear date subsequently to the adoption of the Constitutional Amendment* [of December 15th, 1870], all persons acquiring them are charged with notice of the existence and effect of that amendment."

On the same ground is the concurring opinion[1] of TALIAFERRO, J.

"The bonds were issued without the authority and against the authority of the State, *which had prohibited the increase of the public debt. The State, through its amendment to the Constitution* in [December 15th] 1870, *peremptorily forbade such issuing. The legislature issued these bonds* IN VIOLATION OF THE CONSTITUTIONAL PROVISION PROHIBITING AN INCREASE OF THE PUBLIC DEBT."

The dissenting opinion[2] of LUDELING, C. J., in our favor, shows with equal clearness that the only point decided was the one above stated; for he founds the title

[1] 125–6.
[2] 126.

of the plaintiffs in error upon the acts of 1869 and 1870, stating that the supplemental act of 1871, under which the bonds were actually issued, was not the creation of a new debt, but simply a substitution of one form of indebtedness for another, *which last had been created prior to the Constitutional amendment, and could not, therefore, be impaired thereby.*

"The act No. 26 of the General Assembly of 1869 authorized the bonds of the New Orleans, Mobile and Chattanooga Railroad Company to be guaranteed by the State on certain conditions. The Act No. 31 of the General Assembly of 1870 authorized bonds of the company to be endorsed for a branch road to Shreveport. *Both these acts were enacted before the adoption of the Constitutional Amendment limiting the State debt.* This amendment was ratified by a general election in November, 1870 [promulgated 15th December, 1870], *so that the obligation of the State to endorse the bonds of said company, on certain conditions, existed when the Constitutional Amendment was adopted.*

"Act No. 95 of the General Assembly of 1871 authorized the Governor to issue the bonds of the State, in lieu of endorsing the bonds of the company, on condition that the company would release the State from its obligation to endorse and issue certificates of stock of the company to the State for the amount of the State bonds. In other words, it authorized the Governor to substitute the bonds of the State instead of endorsing bonds of the company to a like amount, if the company would issue to the State certificates of stock. *Certainly this did not create a debt, it was the substitution of one obligation for another, and was not prohibited by the Constitution.* THE DEBT WAS THE SAME, THE EVIDENCE OF IT WAS CHANGED. 23 La. Ann., 405, 622. 26 La. Ann., 561."

(3.) From the petition for a rehearing (*ante* 4) which is part of the record.

2. The only question decided by the Supreme Court of Louisiana being, as we have shown, that the title of Williams & Guion was founded upon a contract (law) of the State of Louisiana, subsequent in date to the Constitutional Amendment of that State, so that, as that court ruled, their title was not protected by Article I., section 10, paragraph 1 of the Constitution of the United States: Was this decision one which this Court can review?

By the Judiciary Act of 5th February, 1867 (United States Revised Statutes, section 709, page 132), it is provided:—

"That a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * where is drawn in question the validity of a statute of * * any State on the ground of their being repugnant to the Constitution * * of the United States, and the decision is in favor of such their validity, or where any title, right, privilege, or immunity is claimed under that Constitution, * * and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such constitution, * * may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error * * ."

The suit in the court below in the language of the Judiciary Act was one

"Where [was] drawn in question the validity of a statute [The Constitutional Amendment of December 15th, 1870] of [a] State [Louisiana], on the ground of [its] being repugnant to the Constitution of the United States, and the decision is in favor of such their validity [of the said Constitutional Amendment]."

It was also one

"Where a[ny] title, * * * [was] claimed under the Constitution * * , and the decision [was] against the title * * specially set up or claimed * * under such Constitution * * ."

For our title was claimed to be valid under Article I., section 10, par. 1, of the Constitution of the United States. This court therefore has jurisdiction.

But it is ingeniously argued by the counsel for the State of Louisiana that there is no jurisdiction, because the clause of the Constitution of the United States was not in reality either construed or referred to in the opinion of the Supreme Court of Louisiana. They tell us 'that it was inferentially admitted throughout the opinion that our title would have been protected *if it had antedated the Constitutional Amendment of 15th December,*

1870, and that what was alone decided was that the title in question was not one which the Constitution of the United States protected; that the Supreme Court of Louisiana could not determine any Federal question, unless our title antedated the Constitution, and as the State Court in construing its own laws determined our title to be of a kind upon which by common consent no Federal question could arise, the Supreme Court of the United States is bound by this decision of local law to hold that no such question was determined. In a word, that where the State Supreme Court holds that the plaintiff in error in the United States Supreme Court had no title which could be upheld by the admitted construction of the Constitution, and where, therefore, there is no decision, right or wrong, of a Federal question by the court of the State, this court can not re-examine that title, on the ground that if the State court were wrong on that point of purely local law, a Federal question would be raised.'

The argument is ingenious, but is against common sense, for if that view were to prevail, the State court could, by a dishonest decision, prevent the review of any case in which the title was actually protected by the Constitution, which might be thus rendered wholly unavailing. Suppose, for example, that the title depended upon a law of the State passed prior to the repealing law, the State court would have power to decide as a fact that the date of that law was really subsequent. In a word, suppose that the act of 20th April, 1871, under which these actual bonds were issued, had been, in fact, passed prior to 15th December, 1870 (the date of the constitutional amendment), and suppose the State court had held, as a matter of law, that that act was only effective really from a date subsequent to December 15th, 1870. If that question of local law could not be reviewed and reversed here, what operation would the clause of the Constitution have? None.

Now the example put is the present case. We assert that in point of law, our title reposed upon two acts (1869 and 1870), both prior to the Constitutional Amendment; that the act of 1871 was as purely supplemental to these, as an act to permit the extension of bonds of the State would be to the act which created them. It is admitted by the State court that there is a Federal question, if in law our title antedates their amendment; and it is admitted by us (in this motion) that unless our title goes behind the date of the Constitutional Amendment, there is no Federal question.

The exact question was decided in this court in the year 1810 in the case of Smith *vs.* The State of Maryland to use of Carroll, &c., 6 Cranch, 286, 304. The plaintiffs claimed land by a sale from the State, whose alleged title arose from an act of Assembly of that State of 1780, whereby all British property within the State was declared confiscated, and the Intendant of the revenue was directed to call upon all persons having such confiscated property, &c., in their possession to deliver up the same; and if any concealment was suspected, he was to direct the Attorney-General to file a bill of discovery. The land in question was held by an otherwise good title, at the date of the act and till suit brought, by Smith, the defendant, as trustee for a British subject. In 1801 the use-plaintiff informed the State authorities and claimed the composition provided for that service by the act of Maryland.

The defendants claimed that the treaty of 1783, declaring against future confiscation, had the effect of preventing any transfer by the Executive of property which might have been, and *legally* was, confiscated, which had not been actually transferred from the former owner to the State.

The Chancellor held, following a decision of the State Supreme Court, that the effect of the State act of 1780

was to vest absolutely in the State of Maryland all British property then within the limits of the State, and decided in favor of the State's title, at the same time saying that, in that view of the case, the construction of the United States *treaty* was unnecessary.

"It is not necessary at this time to declare any opinion as to the intent and meaning of the ninth article of that treaty, or to ascertain to what part of the territories of the United States it might have applied.

" * * * If then this property was confiscated, and the right to it vested in the State by the [State] Acts of October, 1780, c. 45 and 49, the Chancellor does not perceive how it can be affected by the sixth article of the treaty of 1783, declaring that there should be no future confiscations made."

The case was taken to the Court of Appeals, which affirmed the Chancellor's decree that the lands were confiscated in 1780 by the State act of that date; and, the case being brought here, it was argued by the defendants in error that there was no Federal question.

"The courts of the United States," argued Mr. *Ridgely* (page 301), "have not jurisdiction in the case, because the only question is whether, by the laws of Maryland, the property was completely confiscated before the treaty of peace. If it was, the treaty does not apply; if it was not, the treaty protects it. *The laws of Maryland are to be construed by this Court as they are construed in Maryland, and the judgment in this very suit is conclusive evidence of the construction given to their laws by the courts of that State.*"

Mr. *Harper* on the same side:—"*This is not a case depending upon the construction of the treaties, but upon the laws of Maryland.*"

"If by those laws the property was not confiscated before the treaty of peace, we admit that it can not now be confiscated. *If it was confiscated, the treaty does not apply.* The general understanding in Maryland, and the uniform decisions of their courts, have been that the act of Assembly completely confiscated all the British property within that State, without office found, or entry or seizure; so that at the peace there could not be any future confiscations, because no British subject could then hold lands in Maryland. This is an answer to both treaties.

"*The courts of Maryland are the exclusive judges of the construction of the laws of that State.* If this court can take cognizance of the cause, *the only question which they can decide is that which arises upon the construction of the treaty. The question of construction of the acts of Maryland is not open to this court.*"

"The first question," said this court, by Washington, J., "is, has the Supreme Court of the United States appellate jurisdiction in a case like the

present? It is contended, by the defendants in error, that the question involved in the cause turns exclusively upon the construction of the confiscation laws of the State of Maryland, passed prior to the treaty of peace, and that no question, relative to the construction of that treaty, did or could occur. That the only point in dispute was, whether the confiscation of the lands in controversy was complete, or not, by the mere operation of those laws, without any further act to be done. If the former, it was admitted, on the one side, that the right of *Ann Otley*, the British subject, was not saved or protected by the treaty; if the latter, then it was agreed on the other, that it was protected, and that no proceedings subsequent to the treaty, in order to perfect the confiscation, could be supported.

"This argument proves nothing more than that the whole difficulty in this case depends upon that part of it which involves the construction of certain State laws, and that the operation and effect of the treaty, which constitutes the residue of the case, is obvious, so soon as that construction is settled. But, still, *the question recurs, is this a case where the construction of any clause in a treaty was drawn in question in the State court, and where the decision was against the title set up under such treaty?* The only title asserted by the defendants in error, to the land in dispute, is founded upon an alleged confiscation of them by the State of Maryland, and a conveyance to them of the rights thus acquired by the State. The title set up by the plaintiffs in error, for *Ann Otley*, and the only one which could possibly resist that claimed by the grantees of the State, is under the treaty of peace, the sixth article of which protects her rights, provided the confiscation, by the laws of the State, was not complete prior to the treaty. *The point to be decided was, and is, whether this be a case of future confiscation, within the meaning of the sixth article of that treaty; and, in order to arrive at a correct result in the decision of that point, it became necessary, in the State court, and will be necessary in this, to inquire whether the confiscation, declared by the State laws, was final and complete, at the time the treaty was made, or not?*

"The construction of those laws, then, is only a step in the cause leading to the construction and meaning of this article of the treaty; and it is perfectly immaterial to the point of jurisdiction, that the first part of the way is the most difficult to explore. *Although the defendant's counsel admit, and the Supreme Court of the State may, in this particular case, have decided, that, where the confiscation is not complete before the treaty, the estate attempted to be confiscated is protected by the treaty*, still, *if, according to the true construction of the State laws, this court should be of opinion that the acts of confiscation left something to be done necessary to the perfection of the title claimed under them, which was not done at the time the treaty was made, we must say that, in this case, the construction of the treaty was drawn in question, and that the decision of the State court was against the right set up, under the treaty, by one of the parties.*

"This leads to the consideration of the merits of the cause, which depend upon the question before stated, viz., whether the confiscation of the lands in question was so far complete by the laws referred to, that the title and estate of Ann Otley was divested out of her and vested in the State, prior to the treaty of peace? This must depend upon the true construction of the acts [of Maryland] passed in the year 1780, chapters 45 and 49, as it is not pretended that any proceedings were instituted in the nature of an office, to complete the forfeiture of these lands, upon the ground of alienage or otherwise."

Upon the construction of the State acts, this court affirmed the judgment of the court below.

The same principle was decided in Martin *vs.* Hunter's Lessee, 1 Wheat., 357–61 (1816), after the most serious consideration. This was originally an action of ejectment, in which the defendant's title was perfect provided it were protected by the treaty of 1783 (page 356), and a principal question in the case was whether (in the language of STORY, J.).

"This court had authority to examine into the whole record, *and to decide upon the legal validity of the title of the defendant*, as well as its application to the treaty of peace, [in which case] it would be a case within the express purview of the 25th section of the [Judiciary] Act; for there was nothing in the record upon which the court below could have decided but upon the title as connected with the treaty; and if the title was otherwise good, its sufficiency must have depended altogether upon its protection under the treaty. Under such circumstances it was strictly a suit where was drawn in question the construction of a treaty, and the decision was against the title specially set up or claimed by the defendant. It would fall, then, within the very terms of the act.

"The objections urged at the bar are, that this conrt can not inquire into the title, but simply into the correctness of the construction put upon the treaty by the court of appeals; and that their judgment is not re-examinable here, unless it appear on the face of the record that some construction was put upon the treaty. If, therefore, that court might have decided the case upon the invalidity of the title (and *non constat* that they did not), independent of the treaty, there is an end of the appellate jurisdiction of this court. In support of this objection much stress is laid upon the last clause of the section, which declares that no other cause shall be regarded as a ground of reversal than such as appears on the face of the record, and immediately respects the construction of the treaty, &c., in dispute.

"If this be the true construction of the section, it will be wholly inadequate for the purposes which it professes to have in view, and may be evaded at

pleasure. But we see no reason for adopting this narrow construction; and there are the strongest reasons against it, founded upon the words as well as the intent of the legislature. What is the case for which the body of the section provides a remedy by writ of error? The answer must be in the words of the section, a suit where is drawn in question the construction of a treaty, and the decision is against the title set up by the party. *It is, therefore, the decision against the title set up with reference to the treaty, and not the mere abstract construction of the treaty itself, upon which the statute intends to found the appellate jurisdiction.* How, indeed, can it be possible to decide whether a title be within the protection of a treaty, until it is ascertained what that title is, and whether it have a legal validity? *From the very necessity of the case, there must be a preliminary inquiry into the existence and structure of the title, before the court can construe the treaty in reference to that title.* If the court below should decide that the title was bad, and, therefore, not protected by the treaty, must not this court have a power to decide the title to be good, and, therefore, protected by the treaty? Is not the treaty, in both instances, equally construed, and the title of the party, in reference to the treaty, equally ascertained and decided? Nor does the clause relied on in the objection impugn this construction. It requires, that the error upon which the appellate court is to decide shall appear on the face of the record, and immediately respect the questions before mentioned in the section. One of the questions is as to the construction of a treaty upon a title specially set up by a party, and every error that immediately respects that question must, of course, be within the cognizance of the court. The title set up in this case is apparent upon the face of the record, and immediately respects the decision of that question; any error, therefore, in respect to that title must be re-examinable, or the case could never be presented to the court.

"The restraining clause was manifestly intended for a very different purpose. It was foreseen that the parties might claim under various titles, and might assert various defenses, altogether independent of each other. The court might admit or reject evidence applicable to one particular title, and not to all, and in such case it was the intention of Congress to limit what would otherwise have unquestionably attached to the court, the right of revising all the points involved in the cause. It therefore restrains this right to such errors as respect the questions specified in the section; and, in this view, it has an appropriate sense, consistent with the preceding clauses. We are, therefore, satisfied, that, upon principle, the case was rightfully before us, and if the point were perfectly new, we should not hesitate to assert the jurisdiction.

"But the point has been already decided by this court upon solemn argument. In Smith *vs.* The State of Maryland, 6 Cranch, 286, precisely the same objection was taken by counsel, and overruled by the unanimous opinion of the court. That case was, in some respects, stronger than the present; for the court below decided, expressly, that the party

had no title, and, therefore, the treaty could not operate upon it. This court entered into an examination of that question, and being of the same opinion, affirmed the judgment. There can not, then, be an authority which could more completely govern the present question."

See to the same effect the concurring opinion of JOHNSON, J., at page 369.

These decisions were approved by this court in Crowell *vs.* Randall, [1836], 10 Peters, 393, *per* STORY, J., who said:—

"But the court said that in order to decide upon the main question, *it was indispensable to ascertain what the nature of the title was to which the treaty was* sought to be applied. * * They [the cases in this court on jurisdiction] exhibit uniformity of interpretation of that section [of the Judiciary Act] which has never been broken in upon. * * The period seems now to have arrived in which the court should, upon a full review of all the cases, with a view to close, if possible, all future controversy on the point, reaffirm the interpretation which they have constantly maintained."

In the same case is cited Miller *vs.* Nicholls, 4 Wheat, 311, wherein MARSHALL, C. J., said:—

"*It would not be required that the record should, in terms, state a misconstruction of an act of Congress, or that an act of Congress was drawn in question.* It would have been sufficient to give this court jurisdiction of the cause, that *the records should show that an act of Congress was applicable to the case.*"

Of course this means applicable by the decision of the State court.

The same principle is stated by Taney, C. J., in Ohio L. I. & Tr. Co. *vs.* Debolt, 16 Howard, 432 (1853).

These decisions have frequently been approved.

It is sufficient to refer to Craig *vs.* The State of Missouri (1830), 4 Pet., at 428-9; Williams *vs.* Oliver (1851), 12 Howard, 124; The Mayor *vs.* Cooper (1867), 6 Wallace, at 252-3.

A careful examination of all the authorities cited in the brief for the motion to dismiss, enables us to assert that none of them, except those cited in this brief and in our favor, have any application to the only point involved here. It would be a waste of time to refer to them more fully.

It is clear, therefore, that this court has jurisdiction, and must, in the language of WASHINGTON, J. (*ante* 14), inquire into "the merits of the cause," in doing which it will examine into and decide our title without reference to the strange errors of the Supreme Court of Louisiana.

W. W. HOWE,

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,

SIMON STERNE.

Of Counsel with Plaintiffs in Error.

MARCH, 1881.

FILED

No. 7. October Sessions, 1880.

Supreme Court of the United States.

LOUISIANA BOND CASES UNDER ACTS OF 1869, 1870, AND 1871.

JOHN S. WILLIAMS AND WILLIAM H. GUION, PLAINTIFFS IN ERROR (INTERVENORS BELOW IN THE CASE OF THE STATE OF LOUISIANA AGAINST CLINTON, STATE AUDITOR, AND DUBUCLET, STATE TREASURER),

vs.

THE STATE OF LOUISIANA (PETITIONERS BELOW); CLINTON, STATE AUDITOR; AND DUBUCLET, STATE TREASURER (DEFENDANTS BELOW), DEFENDANTS IN ERROR.

Error to the Supreme Court of the State of Louisiana.

BRIEF OF THE PLAINTIFFS IN ERROR ON THE MERITS OF THE CASE.

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I.

HISTORY OF THE CASE.

A.—The Pleadings.

This was a petition (analogous to a bill in equity) in the Superior District Court of the parish of Orleans, State of Louisiana, brought December 31st, 1872, by the State against Clinton, the State Auditor, and Dubuclet, the State Treasurer. The petition averred:—

"That a large number and amount of the appropriations of the Legislature of Louisiana, during the sessions thereof in the years 1871 and 1872, [were] *illegal, unconstitutional, null, and void: that they were in violation* of the amendment to the Constitution of the State of Louisiana, limiting the State debt to $25,000,000, promulgated December 15th, 1870; and because they were without any valid consideration and made to persons having no legal claim upon the State to be paid out of the revenues derived from the taxation of the property of citizens and others owning property subject to taxation, and upon which rested no legal or equitable obligation to contribute to the payment thereof, and for other special reasons and grounds of nullity to be set up as to each item of appropriation, as hereinafter set forth and alleged, and which items of appropriation are as follows, to wit:—

The petition then sets forth thirty-two items of appropriation, against which relief is asked. We are concerned with two only:—

"12. The appropriation in the same act, No. 22 of 1872, of two hundred thousand dollars ($200,000), for interest on the bonds issued to the New Orleans, Mobile and Texas Railroad Company, by virtue of act No. 95 of 1871, in exchange for stock in said railroad company, on all the grounds heretofore generally set up; and further, because said appropriation was a disguised donation of the funds of the State, derived from the people by taxation, for the benefit of a private corporation, and was without any consideration; and further, because the Governor of the State had no right or authority to subscribe for the stock of said company; and

because, further, that said act No. 95 of 1871 attempted to create a debt exceeding $100,000 without providing means in the same act for the payment of the same, and is in violation of Article III. of the Constitution of the State." * * *

"30. Any and all bonds, coupons, or other certificates upon which demand may be made for warrant, payment, or redemption growing out of the act No. 95, approved April 20th, 1871, entitled "An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company," &c.; on all the grounds hereinbefore generally and specially set up and alleged, and the same are made specially grounds against this item as though fully and particularly here set up and alleged; and specially on all the grounds specially set up against items for works of internal improvements and the guarantee of State aid thereto; and further specially because the attempt is made by this act to create a debt of two million five hundred thousand dollars ($2,500,000), when the limit to the State debt of $25,000,000, as fixed by the amendment to the constitution, had been exceeded."

The petition concludes as follows:—

"Petitioner further represents and avers that the amendment to the Constitution of the State promulgated on the 15th of December, 1870, limited the State debt to $25,000,000, and that at that date the debt of the State exceeded $25,000,000, and has at no time since that debt been less than that, but has far exceeded that amount; that every appropriation of the legislature not absolutely requisite and necessary for carrying on the government of the State, and within the actual annual revenues of the State for any one year, and while the State indebtedness exceeds $25,000,000, is wholly unauthorized, unconstitutional, illegal, null, and void, and beyond the power of the legislature to make; that the foregoing items of appropriation and acts of the legislature creating, or attempting to create a State debt or obligations to pay money, or to issue any obligations which might eventually result in an obligation to pay money, are beyond the power of the legislature, and all such items of appropriations and the acts hereinbefore set forth, are unconstitutional, illegal, null, and void, and of no binding force on the State.

"That by said excessive, illegal, and unconstitutional appropriations, the revenues of the State have been far exceeded, and in great measure diverted from the payment of the legitimate debt and current expenses necessary for the proper carrying on of the State government, and to the great financial embarrassment of the State, and to the detriment of the State, and the injury of those who have legitimate claims on the revenues of the State and against the State. That a large amount of the above ap-

propriations have not as yet been warranted for by the State Auditor, and a still larger amount have not been paid by the State Treasurer, but that owing to the pressure of parties interested upon the said officers, they may yield to the demands made upon them, and the Auditor may warrant and the Treasurer may pay the amounts hereinbefore represented as objectionable, illegal, unconstitutional, null, and void, and without legal consideration, and to the great detriment and irreparable injury to the State, the citizens and other property-owners in the State, and the legal creditors of the State, unless said officers, to wit, the State Auditor, Charles Clinton, and the State Treasurer, Antoine Dubuclet, be restrained and enjoined, the first from warranting on the State Treasurer and the latter from paying any warrants upon any of the appropriations herein set forth, complained of, and objected to, as illegal, unconstitutional, null, and void, and without legal consideration.

"Wherefore, petitioner prays that the said Charles Clinton, State Auditor, and Antoine Dubuclet, State Treasurer, be served with a copy of this petition, and cited to answer the same; that, considering the premises, they be enjoined and restrained from issuing or paying, or receiving in payment, any bond, coupon, warrant, certificate, or other writing calling for the payment or credit of money in any way connected with or depending upon any of the items complained of and objected to in the foregoing petition, or which are therein alleged to be unconstitutional, illegal, null, and void, and without legal consideration, and as not in law binding upon the State; and that, after all due proceedings, said injunction and restraining order be made perpetual, and all said items of appropriation and indebtedness be decreed unconstitutional, illegal, null, and void; and he further prays for all general and equitable relief." [1]

On the same day an injunction was granted as prayed in the petition.[2]

In 1874, the case having gone to the Supreme Court, on an issue between the parties, and being remanded to the District Court, that testimony might be taken on the part of the State,[3] these plaintiffs in error, Williams & Guion, intervened.[4] This intervention was analogous to a cross-bill in equity. It alleged the purchase of bonds of the State of Louisiana, referred to in the petition in the paragraphs cited, in open market in New York,

[1] 1–8. The numerals in the notes refer to the paging of the record.
[2] 22.
[3] Opinion of Supreme Court, 17–18.
[4] 29–30.

in July, 1872, for the highest market prices then ruling, and without notice or knowledge of any fact tending to impair their validity.

To this petition the State filed their answer,[1] denying the allegations of the petition, and especially the plea of *bona fide* purchase without notice.

These are all the pleadings in the case, no replication being allowed by the Louisiana Code of Practice.[2]

In January, 1875, a decree[3] was entered, after a hearing upon the pleadings and proofs, perpetuating the original injunction and declaring the issue of bonds of the State of Louisiana, of which the plaintiff was a holder, null and void. [Prior to this decision the case had gone once to the Supreme Court, who first held that the injunction should be dissolved, but afterwards modified this decision, remanding the case for testimony.] The case was then removed to the Supreme Court of the State, which affirmed the decree of the Court below.[4] To their decree of affirmance this writ of error was taken.

B.—The Facts.

About the 1st of July, 1872, Messrs. Williams & Guion, a commercial firm, domiciled in the city of New York, purchased certain bonds of the State of Louisiana, in open market in that city. They purchased them through regular brokers, in the usual course of business, at the highest prices then ruling (seventy-one per cent. of the par value). Two coupons had been paid thereon, and this was known to the purchasers, and formed an inducing cause to the purchase. The purchasers were

[1] 33. See the answer of the State to the intervention of the New Orleans, Mobile and Texas Railroad Company, referred to and made part of their present answer, on pages 10 and 26 of record.

[2] Stewart *vs.* Kahn, 11 Wall., 494.

[3] 81.

[4] 121. A petition was filed for a rehearing, which by the Code (Art. 912) is a pleading in the Supreme Court, and therefore part of the record.

aware of no facts affecting their validity, and had no notice from any quarter to that effect. The purchase was made after Attorney-General *Belden* (of Louisiana) had in an official capacity pronounced them valid.[1]

I.

THE BOND.[2]

"$1000. UNITED STATES OF AMERICA. $1000.

"No. 1351. No. 1351.

"STATE OF LOUISIANA.

"Know all men by these presents, that *the State of Louisiana is indebted to* The New Orleans, Mobile and Chattanooga Railroad Company, or *bearer*, in the sum of $1000 of the lawful money of the United States of America, which the said State promises to pay to the said company, or bearer, on the first day of July, 1910, with interest at the rate of eight per centum per annum, *payable* semi-annually, on the first day of January and July of each year, *in the city of New York*, upon the presentation and surrender of the interest coupons hereunto attached. *For the payment of the said sum of money and the interest thereon, at the times and place, and in the manner aforesaid, the faith and credit of the State of Louisiana is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, approved April 20th, 1871, entitled "An act to relieve the State from its obligation to guarantee the second mortgage bonds," &c., &c.*

"In testimony whereof, and in pursuance of the act aforesaid, *I, Henry C. Warmoth, Governor of the State of Louisiana, have hereunto subscribed my name officially, and caused this bond to be countersigned by the Secretary of the State, and to be sealed with the seal of the State of Louisiana.*

"Done at the Executive Department in the city of New Orleans, this twenty-fourth day of April, A. D. 1871.

"(Signed) H. C. WARMOTH,
"*Governor of the State of Louisiana.*

"GEORGE E. BOVEE,
"*Secretary of State.*"

{Seal of State of Louisiana.}

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[1] 29–30; 68–9.

[2] This is a copy of bond No. 1351, one of those offered in evidence. Record, 108; 30.)

2.

ENDORSEMENT OF BOND.

"State of Louisiana.

{Seal of State}

"One thousand dollar eight per cent. bond.

"Payable 1910.

"No. 1351.

"Interest payable on first days of January and July in each year, in the city of New York.

"Extract from the Constitution of the State of Louisiana, adopted in convention, March 7th, 1868. Article III. 'Whenever the General Assembly shall contract a debt exceeding in amount the sum of $100,000, unless in case of war, to repel invasion, or suppress insurrection, it shall in the law creating the debt, provide adequate ways and means for the payment of the current interest, and of the principal when the same shall become due, and the said law shall be irrepealable until principal and interest be fully paid, or unless the repealing law contain some adequate provision for the payment of the principal and interest of the debt.

"Extract from an act of the General Assembly of the State of Louisiana, entitled "An act to relieve the State from its obligation to guarantee the Second Mortgage Bonds,' &c., &c.

"SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: *That the Governor of this State, be and is hereby authorized to subscribe for twenty-five thousand shares, of one hundred dollars each, of the capital stock of said corporation, on behalf of this State, and to receive the certificates of stock therefor, as payment shall be made for the same, which certificates shall be deposited by him in the office of the Treasurer of this State, and shall not be assignable or transferable, except by the authority of the General Assembly; and be it futher enacted, &c.: That, whereas,* THE SUBSCRIPTION FOR STOCK, AND THE ISSUE OF BONDS THEREFOR, HEREIN PROVIDED, ARE INTENDED TO EXTINGUISH THE OBLIGATION OF THE STATE, TO ENDORSE OR GUARANTEE THE SECOND MORTGAGE BONDS OF SAID CORPORATION, UNDER THE ACT OF THE GENERAL ASSEMBLY RELATIVE TO SAID CORPORATION, APPROVED FEBRUARY 21ST, 1870, AND AS A DISCHARGE OF EITHER PARTY FROM ALL THE OBLIGATIONS FOR THE ISSUE, ENDORSEMENT, GUARANTEE, AND SECURITY OF SAID MORTGAGE BONDS, AS PROVIDED IN THE FOURTH SECTION OF SAID ACT; that the said corporation shall be required, at or before the complete issue of the said bonds, to file with the Secretary of State, a full release and acquittance of the obligation of the State so created to guarantee said mort-

gage bonds, and for which the provisions of this act are designed as a substitute and discharge. * * *

"SEC. 2. Be it further enacted, &c., That *for the payment of the said subscription, bonds of this State shall be issued, signed by the Governor and Secretary of State, and sealed with the seal of the State, payable in not less than thirty-five nor more than forty years from their date, with interest* at the rate of eight per cent. per annum, *payable* semi-annually *in the city of New York*, on the first days of January and July of each year, for which interest coupons, bearing the fac simile of the signature of the Treasurer of the State, shall be attached to the bonds, and annually from and after the issuing of said bonds or any part thereof, *there shall be imposed for each fiscal year a State tax of one mill on each dollar of the valuation for each year, of all the real and personal property in this State subject to taxation, which tax shall be assessed, levied, and collected in current moneys by the annual assessment and collection of taxes for each year in the manner prescribed by law for the collection of other taxes, and the moneys derived therefrom shall be immediately on collection be paid up into the Treasury of this State, as a distinct fund, and kept as a separate account*, and such moneys and all moneys received from said company for dividends on said stock shall be applied in each and every year, first to the payment of the interest as it shall accrue on the said bonds, and such tax shall continue to be assessed, levied, and collected in each and every year, until all the interest and principal of said bonds which shall from time to time remain outstanding, shall be fully paid, and all bonds and coupons so purchased and paid shall be immediately canceled by the said Treasurer."

3.

INTEREST COUPON ATTACHED TO BOND.

"$40. *The State of Louisiana* $40.

Will pay Forty Dollars to the Bearer, in the City of New York, on the first day of January, 1873, being semi-annual interest due on Bond No. 1351.

Signed, ANTOINE DUBUCLET,
Treasurer of the State of Louisiana.

[There were seventy-seven similar coupons on each bond.]

II.

ASSIGNMENT OF ERRORS.

The Supreme Court of Louisiana erred:

(1.) In entering the following decree:—"It is therefore ordered that the judgment herein perpetuating the injunction and declaring void the bonds issued under act 95 of the act of 1871, amounting to $2,500,000 be affirmed, appellants paying cost of appeal."

(2.) In affirming the judgment[1] of the court below (the superior district court for the parish of Orleans) rendered January 23d, 1875, and signed February 2d, 1875.

(3.) In not reversing the said judgment of the court below rendered January 23d, 1875, enjoining the State Auditor and State Treasurer from issuing, or paying, or receiving in payment any bonds, coupons, certificates, warrants or other writings, calling for the payment or credit of money in any way connected with, or depending upon, any of the terms complained of or objected to in the petition; and decreeing that the series of bonds issued under act No. 95 of 1871, amounting to $2,500,000 with coupons attached, made payable to the New Orleans, Mobile and Texas Railroad Company or bearer were null and void with cost.

(4.) In not dissolving the said injunction.

(5.) In not holding the said bonds in the hands of the intervenors Williams & Guion, valid bonds of the State.

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[1] 81.

Supreme Court of the United States.

Williams & Guion, Plaintiffs in Error,

vs.

The State of Louisiana and others, Defendants in Error.

October Sessions, 1880.

No. 7.

ADDITIONAL ASSIGNMENT OF ERRORS.

(6.) In deciding that the Constitution of Louisiana promulged on the 15th December, 1870, was not a law impairing the obligation of the contract made by the State of Louisiana with the holders and owners of the bonds of the State, issued under Act of 20th, April, 1871, No. 95, of 1871, and did not violate Article 1, Section 10 of the Constitution of the United States.

(7.) In not deciding that the Constitution of Louisiana, promulged in December, 1870, impaired the obligation of the State's contract with the holders of the bonds issued under act of 20th April, 1871, No. 95, 1871, under Article 1., section 10, of the Constitution of the United States.

III.

ARGUMENT.

In July, 1872, upon the purchase in good faith for value, by Williams & Guion, of Louisiana bonds, all the benefits of contracts, executed in their favor by the acts of 1869, 1870, and 1871, accrued to them as of the date of the execution of those contracts, and can not be divested by the subsequent constitutional amendment of November–December, 1870.

1. What contract does the purchaser of a State bond make with the State which issues it? If I buy in 1880 a bond of the State of New York issued in 1850 in lieu of bonds issued in 1820, I have acquired property in 1880, but I have bought a title which goes sixty years behind the date of my purchase, and which is a barrier to rights or defenses which are junior in time.

When, therefore, Williams & Guion, in July, 1872, purchased bonds of the State of Louisiana, issued under the act of 1871, they purchased a contract made primarily by the State of Louisiana, on April 20th, 1871, with themselves; and as the securities were negotiable, no equity existing between any prior holder and the State impaired their title.

So much will be conceded. But of course they were affected by everything stated upon or referred to by the bonds themselves. And they purchased the correlative right to have the advantage of all statements, references, and admissions in their favor, contained on those bonds.

The first thing which they noticed upon the bond was the statement that

"this bond [was] issued *in pursuance and by authority of an Act of the General Assembly of said State, approved April 20th, 1871*, entitled 'an act to relieve the State from its obligation to guarantee the second mortgage bonds,' &c."

and of course they were brought into direct contact with the act of 20th April, 1871 (*post* 67). By examining the second section of that act, they discovered that their bonds were issued—

(1.) As the result of a compromise entered into between the State of Louisiana and the New Orleans, Mobile and Chattanooga [Texas] Railroad Company, in lieu of certain prior existing obligations, *which the act admitted existed at that time* on the part of the State to the railroad.

(*a*) *The compromise* appears from the title of the act, and the title is referred to on the bond, viz.:—

"*An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, under an act of the General Assembly approved February 21st, 1870*, by subscription on the part of the State to the capital stock of said corporation, and to regulate the conditions of such subscription, and to secure the construction of the road of said corporation from Vermilionville to Shreveport."

(*b*.) It also appears from the body of the act (also printed upon the bond):—

"*And be it further enacted, &c.*, That whereas the *subscription for stock and the issue of bonds therefor herein provided are intended to extinguish the obligation of the State to endorse or guarantee the second mortgage bonds of said corporation, under the act of the General Assembly relative to said corporation, approved February 21st, 1870, and as a discharge of either party from all obligations for the issue, endorsement, guarantee, and security of said mortgage bonds as provided in the fourth section of said act;* the said corporation shall be required, at or before the complete issue of the said bonds, to file with the Secretary of State a full release and acquittance of the obligations of the State so created to guarantee said mortgage bonds, and for which the provisions of this act are designed as a substitute and discharge; and the said," &c.

(2.) That one of the terms of this compromise was the issuing of these bonds by the State, and the issuing to the State of $2,500,000 of stock by the railroad company. These sections are printed in full on the bond.

"SECTION 1. *Be it enacted by the Senate and House of Representatives in General Assembly convened,* That the Governor of this State be and is hereby authorized to subscribe for twenty-five thousand shares of $100 each of the capital stock of said corporation on behalf of this State, and to receive the certificates of stock therefor as payment shall be made for the same, which certificates shall be deposited by him in the office of the Treasurer of this State, and shall not be assignable or tranferable except by the authority of the General Assembly.

"SEC. 2. *Be it further enacted, &c., That for the payment of said subscription bonds of this State shall be issued, signed by the Governor and Secretary of State, and sealed with the seal of the State, payable not less than thirty-five nor more than forty years from their date, with interest at the rate of eight per cent. per annum, payable semi-annually in the city of New York, on the first days of January and July of each year, for which interest coupons bearing the fac-simile of the signature of the Treasurer of the State shall be attached to the bonds.*"

(3.) That another term of the compromise was the absolute release of the State by the Company of its then existing obligation to guarantee second mortgage bonds of the company (*ante* 10).

(4.) That the State had provided in the most secure way for the payment of the principal and interest thereon.

"And annually from and after the issuing of the said bonds or any part thereof, there shall be imposed for each fiscal year a State tax of one mill on each dollar of the valuation, for each year, of the real and personal property in this State, subject to taxation, which tax shall be assessed, levied, and collected in current moneys by the annual assessment and collection of taxes for each year, in the manner prescribed by law for the collection of other taxes, and the moneys derived therefrom shall immediately on collection be paid into the treasury of this State as a distinct fund, and kept as a separate account; and such moneys and all moneys received from said company for dividends on said stock shall be applied,

in each and every year, first, to the payment of the interest as it shall accrue on the said bonds, and the balance, in each year, shall be applied to the purchase of said bonds; such tax shall continue to be so assessed, levied, and collected in each and every year until all the interest and principal of said bonds, which shall from time to time remain outstanding, shall be fully paid; and all bonds and coupons so purchased and paid, shall be immediately canceled by the said Treasurer."

The consideration stated to the purchaser by the act was this:—There was an alleged and admitted conditional liability, at the date of the passage of the act of 1871. That was the first consideration. Then the State was greatly interested in the completion of the Shreveport branch of the road, and was offered $2,500,000 of the stock of a company that, if well managed, would have been very valuable. The consideration, therefore, was:—

TO THE STATE.

(1.) The absolute release of a liability, which the legislature admitted to be existent, and the Supreme Court of the State decided to be binding.[1]

(2.) Twenty-five thousand shares of $100 each ($2,500,000), of the stock of the New Orleans, Mobile and Texas Railroad Company.

(3.) The covenant by the company to commence its road to Shreveport in six months, and to complete the same in the time limited by the former act of 1870.

TO THE CORPORATION.

The issue of $2,500,000 *State bonds* in lieu of *a greater number* ($3,000,000)[2] *of railroad* (second mortgage) *bonds guaranteed by the State.*

State *ex rel.* vs. Graham, 23 La. Ann., 404.

[2] 51.

The act of 1871 provided that—

"the said corporation shall be required, at or before the complete issue of the said bonds, to file with the Secretary of State a full release and acquittance of the obligations of the State so created to guarantee said mortgage bonds, and for which the provisions of this act are designed as a substitute and discharge; and the said corporation shall, by its express agreement made and entered into by the vote of its board of directors, and attested by its seal and the signature of its secretary, obligate itself to commence that part of its railroad from Vermilionville to Shreveport within six months, and to complete the same within the time limited therefor in said act of the General Assembly."

The purchasers were not, therefore, bound to ascertain whether the release had been filed. It was not a condition precedent. The corporation might file the release at any time before "the complete issue of the said bonds." But the release[1] was actually filed two days after the passage of the act, being two days before the complete issue of the bonds. After reciting the act it proceeds:—

"Now, this instrument, which is made and entered into by the said The New Orleans, Mobile and Chattanooga Railroad Company, by and in pursuance of the vote of its board of directors, witnesseth: That the said The New Orleans, Mobile and Chattanooga Railroad Company hath accepted, and doth hereby accept, all and singular the first above-mentioned act of the General Assembly of the State of Louisiana, and in consideration of such act and of the subscription made thereunder by the Governor of the State of Louisiana, on behalf of the said State, for such twenty-five thousand shares of $100 each, of the capital stock of said corporation, and of the payment made or to be made, of such subscription in bonds of the State as prescribed by the said act, the said New Orleans, Mobile and Chattanooga Railroad Company doth hereby fully release, acquit, and discharge the State of Louisiana of and from the obligation of said State, so created by the said act of February 21st, 1870, to guarantee said second mortgage bonds as prescribed in or by virtue of the fourth section of said act, and for which the provisions of the said subsequent act providing for such subscription by the State for $2,500,000 of the stock of said company, are designed as a substitute and discharge; and further,

[1] 76. The resolution of the Board of Directors of the Company directing the agreement is on page 75 of the Record.

for the considerations aforesaid, and in pursuance of and conformity with the provisions in that behalf, the said first above-mentioned act of the General Assembly of the State of Louisiana, the said The New Orleans, Mobile and Chattanooga Railroad Company by this express agreement, made and entered into by the vote of its board of directors, and attested by its seal and the signature of its secretary, doth hereby obligate itself and binds itself to the State of Louisiana, to commence that part of its railroad, from Vermilionville to Shreveport, within six months, and to complete the same within the time limited therefor in the act of the General Assembly, which is in that behalf referred to in the said first-above-mentioned act.

In witness whereof, the said The New Orleans, Mobile and Chattanooga Railroad Company, in pursuance of a resolution of its board of directors, hath to this instrument, which is designed to be filed with the Secretary of State of the State of Louisiana, affixed its corporate seal, and caused the same to be attested by the signature of its secretary, on the day and year first above written.

The New Orleans, Mobile and Chattanooga Railroad Company,

[SEAL] (Signed) By JNO. J. HOWELL,
Secretary.

OFFICE OF SECRETARY OF STATE,
NEW ORLEANS, January 11th, 1875.

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in this office.

Given under my hand and the seal of the State this eleventh day of January, A. D. 1875, and of the Independence of the United States the 99th.

[SEAL OF STATE.] (Signed) P. G. DESLONDE,
Secretary of State.

And the certificates[1] of stock (twenty-five thousand shares, of the par value of $2,500,000) were duly transferred to the State, and said stock was held by the State at the beginning of and during this litigation.[2]

It is quite true that the purchasers were affected with notice of the passage of the constitutional amendment

[1] 69-71.

[2] 11-2. (Admission of counsel.) Indeed, the first opinion and decree of the Supreme Court before our intervention, held that as there had been no return by the State of this stock, or offer to return it made, their petition must be dismissed as to those bonds. See Record 16, opinion by HOWELL, J.

of December 15th, 1870. What did the amendment direct?

"Amendment 3d. That prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed $25,000,000."

But what did the act of 1871 tell the bondholder? It told him, first, that there was an existing obligation by the State to guarantee $2,500,000 of second mortgage bonds of the State, under the acts of 1869 and February, 1870. And that it was about to (and the bond told him that it had) exchange that obligation for one which the Legislature deemed more favorable in every respect; for by the new agreement the State got twenty-five thousand shares of stock, which gave it an enormous power in the management of the railroad, besides the pecuniary value of the shares in a road finished and operated from Mobile to New Orleans. What was the alleged prior obligation which was compromised by the act of 1871? It was stated in that act to be (and that portion of the act written on the bond)

"the obligation of the State to endorse or guarantee the second mortgage bonds of said corporation, under the act of the General Assembly relative to said corporation, approved February 21st, 1870, * * [and] all obligations for the issue, endorsement, guarantee, and security of said mortgage bonds, as provided in the fourth section of said act."

By a reference to section 4 of that act (*post* 56), Messrs. Williams & Guion would have found that the railroad company was authorized to build a road

"with one or more tracks and suitable turnouts from any point on the main line of its railroad as the same has been or may be hereafter located in the parish of St. Martin, or in the parish of Lafayette, northwesterly on such a course or route as the directors of the said company may deem most expedient and for the interest of said company to adopt, towards and *to Shreveport*, in the parish of Caddo, via Alexandria (or some point near Alexandria), in the parish of Rapides; and also a railroad with one or more tracks and suitable turnouts from any point upon its main line of railroad, as the same has been or may be hereafter located in the parish of Iberville, northerly or north-westerly, as the directors of

said company may deem most expedient and for the interest of said company to adopt toward and to any point on the Mississippi river, in the parish of West Baton Rouge, *and all powers, privileges, grants, guarantees, and franchises which have been heretofore granted, or which are by this act granted to said company for the construction, maintenance, and use of its main line of railroad* within the State of Louisiana, westerly from the city of New Orleans, *shall be and are hereby made applicable to the said lines of railroad to Shreveport, and to said point in the parish of West Baton Rouge.*

The particular guarantee which by this act of 1870 was applied to the branch road to Shreveport, is the subject of the act of 19th February, 1869, to which we are specifically referred in section 4 of the act of 1871 (*post* 57). By section 8 (*a*) of the act of 1869 (*post* 41–2), it had been enacted:—

"That when the said mortgage shall have been so delivered, approved, and recorded, and one continuous portion or section of forty miles in length of the said main line of railroad within the State of Louisiana, shall have been constructed by the company and the rails laid thereon, the company may deliver to the Governor of the State of Louisiana $500,000, or £100,000 sterling, of such second mortgage bonds, and the Governor shall thereupon subscribe a certificate to be written or printed upon each of said bonds, in the following words:—

"*The payment of the principal of the within bond when due, and of the interest thereon as it accrues, is guaranteed by the State of Louisiana pursuant to the provisions of the act of the General Assembly of such State authorizing such guarantee,*"

"*And shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the Secretary of State, and the bonds shall then be delivered to the company for its general uses and purposes authorized by its charter.*

"SEC. 9. *Be it further enacted, &c.*, That upon the construction of each additional section or portion of forty miles in length of said main line of railroad within the State of Louisiana, the company may execute and deliver to the Governor of the State of Louisiana a further amount of such second mortgage bonds equal to $12,500, or £2500 sterling, as the company may elect, for each and every mile in length of said main line of railroad within the State of Louisiana so constructed (and for which bonds shall not have been previously guaranteed as herein provided), and thereupon

"The said Governor shall subscribe a certificate of guarantee upon each and every of such bonds in the form prescribed in section eighth of this act, and the same shall be sealed and attested in like manner, and shall forthwith be delivered to the company for its general use and purposes authorized by its charter; and when the whole of said main line of railroad within the State of Louisiana shall have been constructed by said company, all the residue of the second mortgage bonds authorized by this act may be executed by the company, and certificates of guarantee thereon in the form aforesaid shall be subscribed by the Governor, and sealed and attested as hereinbefore provided; and such guaranteed bonds shall forthwith be delivered to the company for its general uses and purposes authorized by its charter."

The purchasers were therefore told that the Louisiana bonds they bought were compromise bonds, issued in lieu of other bonds to a much greater amount,[1] which the State had promised (by the act of 1870) to guarantee according to the provisions of the act of 1869. Their title, they had the right to believe, went back, as to right, to the act of 1870; as to manner and extent, to the act of 1869.

Suppose for the present that Williams & Guion had bought their bonds at the date of the passage of the act (22 April, 1871), instead of fourteen months afterwards (July 1st, 1872), would their title have been exposed to the defense which the Supreme Court of Louisiana pronounced a valid one?

If the conditions required by the act of 1869 had been then fully complied with, of course the title would have been perfect. Now the conditions were (*post*, 41–2; *ante* 16), that when

"One continuous portion or section of forty miles in length of the said [branch line to Shreveport, by the act of 1870, section 4], within the State of Louisiana shall have been constructed by the company, and the rails laid thereon, the company may deliver to the Governor of the State of Louisiana $500,000, or £100,000 sterling of such second mortgage bonds, and the Governor shall thereupon subscribe a certificate to be written or printed upon each of said bonds in the following words," &c.

[1] 51.

If these had been bonds issued upon the completion of any forty miles of the branch road, of course no defense could be raised against them, unless at the date of the constitutional amendment the promise of the State by the acts of 1869 and 1870 had become absolutely void.

The only limitation imposed upon the grant of the State to the branch road was (*post*, 57) the following:—

"Provided, however, that *such provisions* of the act entitled 'An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana,' approved February 17th, 1869, *as relates to the guarantee of the second mortgage bonds of said company, shall be applicable only to such parts or portions of the said lines of railroads to Shreveport*, and to said point in the parish of West Baton Rouge, *as shall be surveyed, located, and constructed within five years from and after the acceptance of this act by said company;* and the said provisions of said act shall be applicable to such parts or portions of said last-mentioned lines of railroad as shall be surveyed, located, and constructed within the time last aforesaid."

It will be observed that there is not a word in the whole act referring in any way to *the branch road to Shreveport, with which alone we are concerned*, except the language just quoted in the fourth section of the act of 1870 (*post*, 57). The grant of $3,000,000 of *State bonds* provided in section 7 of the act of 1870 (*post*, 60–1), and all conditions relating to the same, was based upon the building of the main road in a due west line from New Orleans to Houston. The bonds provided by this act of 1870 to be issued on *the branch road* (which was to extend north-westerly from Donaldsonville to Shreveport), were *the second mortgage bonds of the company*. The act of 1871 was simply amendatory of section *fourth* of the act of 1870, providing, in lieu of *the second mortgage bonds of the company, upon the branch line to Shreveport, which were agreed to be guaranteed by the State* in section 4 of the act of

1870, the issue by the State of its own bonds to the extent of $2,500,000. Of the $3,000,000 of the *State* bonds, *upon the main road*, provided by section *seventh* of the act of 1870, only $750,000 were ever issued.

The act of 1871 imposed no further condition than that required by the act of 1870, merely providing (*post*, 68) that

> "The said corporation shall, *by its express agreement*, made and entered into by the vote of its board of directors, and attested by its seal and the signature of its secretary, obligate *itself to commence* that part of its railroad from Vermilionville to Shreveport [the branch road] within six months, and to complete the same within the time limited therefor in said act [of 1870] of the General Assembly."

Now, the five years for the *completion* of the branch road (section 4, act of 21st February, 1870), did not expire till the 21st of February, 1875.[1]

It is therefore quite clear that Messrs. Williams & Guion were entitled to infer that *in November–December, 1870*, there was an absolute obligation on the part of the State to guarantee all the second mortgage bonds of the company on branch line, to the extent of $12,500 a mile, as each forty miles was completed; that the time within which this obligation would continue must last over four years beyond the date of the constitutional amendment, nearly four years from the passage of the act, and nearly three beyond the date of purchase by themselves. They were, therefore, certainly entitled to infer that at the passage of the constitutional amendment in December, 1870, there was an existing obligation on the part of the State to guarantee at the rate of $12,500 a mile the second mortgage bonds of the company on the whole length of the branch railroad to Shreveport (a dis-

[1] Even by the act of 1869, the time to construct the *main* road extended to January, 1873. The company was given three months to accept the act, eight months thereafter to make the survey, and three years after survey to build the road, a time elapsing January 17th, 1873. *Post*, act of 1869, sections 12 and 14.

tance of about two hundred and forty miles); *and that this guarantee was to be made as each forty miles was completed, and that the completion of any forty miles prior to the 21st of February, 1875, would* require the guarantee of the second mortgage bonds in the sum of three millions of dollars.

"This," says WYLY, J., in the Supreme Court of Louisiana, "*was the subsisting obligation of the State when the constitutional amendment, limiting the State debt* to $25,000,000, *went into operation* in November, 1870. * * [1]

"*When the constitutional limitation went into force* in November, 1870, *the State was under obligation to guarantee second mortgage bonds on sections of forty miles*, if properly completed, on the main line and on the branch line to Shreveport. * * If the sections should be completed, and the rails laid within the time and manner specified in the said acts of 1869 and 1870, and the mortgage to the State should be approved by the Governor, and registered in the office of the Secretary of State, then *the State would be under obligation to guarantee said second mortgage bonds*." [2]

In addition the bond (*ante* 5) declared on its face that—

"This bond [is] issued *in pursuance and by authority of* an act of the General Assembly of said State [of Louisiana], approved April 20th, 1871," &c.

This was an uncontradictable averment that all requirements of that act had been performed, and that all conditions of the prior acts referred to therein had been complied with. And this, independently of our argument heretofore, renders immaterial the question of the actual performance on the part of the company of any requirement whatever. Knox *vs.* Aspinwall, 21 How., 542, was a case of subscription to stock under a statute. The bonds adopted the language of the obligations held by our clients, reciting that they were issued in pursuance of the statute, and it was "ruled that the purchaser

[1] 123.
[2] 124-5.

was not bound to look further for evidence of a compliance with the condition annexed to the grant of the power." *Per* HARLAN, J., in Buchanan *vs.* City of Litchfield, Morrison's Transcript, February, 1881, at 223. See that case, and others, cited therein.

And there were *no conditions precedent.* The act of 1871 enacted that the bonds might issue immediately *upon the filing of a promise by the company.* (*Post* 68).

The question then recurs, did the act of 1871 create a new debt?

This is in reality the only question in the case. It is clear that it did not. There was an acknowledged existent obligation, in November, 1870 (date of constitutional amendment), in April, 1871 (date of the act of 1871), in July, 1872 (date of purchase of bonds), and for nearly three years afterwards, on the part of the State to guarantee the second mortgage bonds of the railroad as each forty miles was completed.[1]

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[1] It is not a little extraordinary, in view of the language of the acts of Assembly, that the Supreme Court should have used this language:—

"The obligation of the State to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company *has lapsed, because the said company failed to complete the first section of forty miles of the main line by the eighteenth day of January, 1871; they failed to complete any of the other sections of the said main line within three years after the survey and location, and they failed to survey, locate, construct, and put in running order any part of the branch road from Vermilionville to Shreveport, within five years,* as specified in the said act of 1870."

Now, there is no proviso that any portion whatever of *the branch line* (with which we are alone concerned), should be completed before the lapse of five years from February 21st, 1870. The proviso of *three years* referred to by the judge, related to the *main line only*. It is found in the act of 1869, section 12 (*post*, 45). The branch line was not authorthorized till 1870, and, as we have said before, was subject to the single condition of *completion within five years* (*post*, 57). The obligation of the State to issue mortgage bonds *on the branch road* had as little lapsed in 1871–2–3, or 4, as on the day of the passage of the act of 1870. And in the succeeding sentence of this very opinion (*ante*, 20), this is admitted.

But can it be said that the issuing of bonds to take up a larger existent conditional obligation was a new debt, *in the sense of increasing the existing debt of the Commonwealth?* It will be remembered that the railroad had until April, 1875, to complete the branch road. But this litigation and the financial policy of re-funding adopted by the State, destroyed the credit of the State and company, and prevented the sale of the second mortgage bonds upon the main line and branch line.[1]

If a surety purchases his discharge by agreeing to give a large sum, less than the value guaranteed, and receiving an almost equal value, can he be said to have increased his original debt? If the railroad had been completed, the conditional obligation would have reached a positive debt of $3,000,000. This debt was canceled by an agreement to issue $2,500,000 in exchange for stock to the same amount. To hold this the creation of a new debt forbidden by the constitutional amendment of 1870, is to hold that a State may not through its legislature compromise any conditional obligation, however advantageously, by an outlay, when the limit of debt allowed by the constitution has been passed. We can not summarize this branch of the argument better than in the language of the dissenting opinion of the Chief Justice.[2] "*The debt was the same; the evidence of it was changed.*"

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[1] 51. W. S. Williams, a former director, says:—

"In the event of the completion of the road, the capital stock given by the company to the State, in exchange for this issue of bonds on the part of the State, covering not only its branch line alluded to herein, but *nearly two hundred miles of its main line then constructed*, gave to the State a consideration regarded as of great value at that time. In addition to this consideration in the form of capital stock, the company relinquished the obligation of the State under a statute of 1870, whereby the State assumed to guarantee about three millions of dollars of the second mortgage bonds of the company."

The fourth coupon was enjoined in this suit.

[2] 126.

And this view was taken in 1871 by the Supreme Court of Louisiana, who decided that *the whole of this conditional obligation to endorse second mortgage bonds of this company was a part of the State debt in December, 1870, and must be included in computing the total debt at that date.*

State of Louisiana *ex rel.* Salomon & Simpson *vs.* Graham, Auditor (1871), 23 La. Ann., 402.

This was a petition for a writ of *mandamus* to compel the State Auditor to issue a warrant for $53,000, under an appropriation act No. 32 of March, 1871, entitled, "An act for the relief of James O. Nixon, late public printer."

The return of the Auditor alleged that the act was unconstitutional, on the ground that on the date of the passage thereof, the debt of the State exceeded $25,000,000, and the General Assembly were prohibited by Amendment Third to the Constitution of 15th December, 1870, *to increase the State debt above that sum.* The State intervened to resist the claim upon the same ground.

The principal question was whether the State debt did exceed $25,000,000 at the date of the passage of the act.

"The evidence," said LUDELING, C. J., "leaves no doubt that the debt of the State exceeded $25,000,000, on or before the 1st of March, 1871. [Here follows a table of the debts of the State.]

"Besides this, the State has obligated itself to endorse the bonds of the New Orleans, Mobile and Chattanooga Railroad Company, and the New Orleans, Baton Rouge and Vicksburg Railroad Company, to the extent of $12,500 per mile of each of said railroads, as they are completed. It is contended that the bonds issued in favor of the property banks, amounting to $4,839,933.33, should not be computed as debts of the State because they are amply secured by the assets of the banks, and because the accrued interest thereon have been promptly paid by the banks. It is well known, especially in this country, that persons, natural and artificial, frequently fail in business, and from affluence they are suddenly reduced to insolvency. The present ability of the property banks to meet their liabilities

is no guarantee that the State will not eventually have to pay her bonds issued to aid said banks; and much less is it a reason to say that the said State bonds should not be computed as a part of the debt of the State. If it had been intended to exclude these bonds or others in the computation of the debt of the State, limited by the Constitution, it would have been done in express terms.

"In the case of the City of Baltimore *vs.* Gill, 31 Md., the court held that a temporary loan to the city, made on a pledge of railroad stock owned by the city was a debt, notwithstanding it was stipulated in the contract that the city was exempted from all personal liability, and that the lender should look alone to the pledge for payment. In that case the city of Baltimore had attempted to evade a constitutional provision, by which the debt of the city could not be increased except on the joint assent of the legislature and of the people by a vote.

"It is also insisted by counsel that the indebtedness of the State can only be ascertained from the amount of the outstanding liabilities, for the authorities must provide and raise a revenue; that allegations or promises to issue hereafter bonds to railroads when they are built, and which, perhaps, never will be built, do not constitute an indebtedness, because the State need not provide to pay a part of principal and the interest on the bonds which do not exist. And if the State is ever called on to issue such bonds, they will be amply secured by mortgages which will be at least an equivalent, and consequently an asset to counter-balance the liability.

"The fallacy of counsel consists in assuming, first, that a conditional obligation is no obligation; and second, that the promissory note of A secured by a mortgage on the property of B, is not a debt of the maker A, because it is secured. Both positions are untenable.

"Conditional obligations are such as are made to depend on an uncertain event. If the obligation is not to take effect until the event happen it is a suspensive condition, etc. C. C. article 2021."

"The condition being complied with has a retrospective effect to the day that the engagement was contracted; if the creditor dies before the accomplishment of the condition, his rights devolve on his heirs. C. C. article 2041. And the creditor may, before the fulfillment of the condition perform all acts conservatory of his rights." C. C. article 2042.

"Thus the obligations of the State, in relation to the railroad companies aforesaid are suspensive and potestative conditional obligations; *the State is a debtor to those companies, and the fulfillment of the conditions will have a retrospective effect to the time when the engagements were contracted*—for example when the Mississippi and Mexican Gulf Ship Canal Company will have completed the construction of the lock on said canal, the company will be entitled to demand the bonds of the State for $126,000, and when issued it will not be denied, the bonds will form a part of the debt of the State. *But when and how was the debt created? It is clear it was created by act of Legislature in 1869.* The law on

this subject is the same in the other States of this Union. "A party bound by either an express or an implied contract, in virtue whereof he may become liable to the payment of money, is a debtor, although his liability be contingent," 5 Barb., 410, 18 Wend., 375, 386, 5 Cowen, 69, 8 Cowen, 427, and 4 Greene, 195.

"The reasoning of Chief Justice Mellen seems conclusive.

'The objection is that Van Wyck was not a creditor of Seward at the date of the deed, because it was then uncertain whether he would ever have a cause of action on the covenant. Let us see where this doctrine would carry us. If one promises to pay money at a future day, he may pay before the credit expires, and until that time arrives, it is uncertain whether an action will ever accrue on the promise. The contract of surety only creates a contingent liability. Until the principal is in default it is uncertain whether an action will ever accrue against the surety. The drawer of a bill of exchange is only bound to pay it upon a contingency which may never happen, and so it is with the endorser of negotiable paper of all kinds. The contract of indemnity is in another case, where an action may never accrue upon the undertaking. In these, and all other cases depending upon contract, the person with whom the engagement is made is as much a creditor within the meaning of the statute as though he had a debt upon which a right of action already existed.'"

See s. p., decided in State *ex rel* R. R. Co. *vs.* Graham; State *vs.* Maginnis; State *vs.* North Louisiana R. R. [*Post* 31; 32; 29].

If we are right in holding that the act of 1871 was not unconstitutional, but little remains to be said.

If it were necessary to show that precedent conditions had been performed, that would be shown by the issuance of the bonds in due course, under the seal of the State, and signature of the Governor. Indeed, the act of 1869 expressed the inference of the law when it declared

"That the signature of the Governor to the certificate of guarantee shall be conclusive evidence in favor of the holder of every bond so certified, that the conditions of this act have been complied with on the part of the company, and that said bonds have been duly made and regularly certified and issued pursuant to the provisions of this act; *and every such certificate of guarantee, when so subscribed, shall be a valid and binding obligation of the State of Louisiana in favor of whomsoever shall from time to time be the holder of the bond bearing such certificate.* * *." (*Post*, 43.)

Where obligations of a state or county are to become absolute upon the performance of precedent conditions, the assertion that they have been performed by those entrusted by the State with the ascertainment of the fact, is a presumption de jure, *that the fact is as stated, and it can not be contradicted.* Pendleton Co. *vs.* Amy, 13 Wallace, 305; Town of Coloma *vs.* Eaves, 92 U. S., 489. Buchanan *vs.* City of Litchfield (*ante* 21).

But, as we have said, there were admittedly no precedent conditions. If the act of 1871 was constitutional, we are fully protected, and this is admitted by the Supreme Court, which places its decision on the sole ground of unconstitutionality.

2. Let us illustrate the argument further by supposing the State to be a *quasi*-public corporation,—a railroad company,—which is represented by its directors as is the State by the legislature. An amendment to the charter accepted by the corporation, forbids an increase of debt beyond a fixed limit which has been passed. The directors have, by lawful authority, prior to the amendment incurred a large conditional obligation, they have guaranteed a fixed dividend upon the stock of a leased railroad (as the Pennsylvania Railroad Company guaranteed a dividend of ten per cent. upon the stock of the United Companies of New Jersey). The guaranty does not in fact, necessarily, involve the guarantor in debt. If the dividend is earned by the leased company, nothing is paid. But the directors believe that the leased company will not earn its guaranteed dividend, and that their company will become liable for an enormous yearly charge (as have the Pennsylvania Railroad Company, which loses over a million of dollars a year in operating

the United Railroads of New Jersey, under their ten per cent guaranty). They apply to the stockholders of the leased company, and offer an immediate payment of a number of their bonds, in place of the more onerous guaranty, provided they receive as a partial equivalent a corresponding amount of the stock of the leased company. The proposition is accepted, the guaranty is dissolved; the bonds are issued to the stockholder of the leased company, and are sold by them at the highest market prices to *bona fide* purchasers. Subsequently it becomes convenient for the bond-makers to repudiate their obligations. "You should have noticed," they say to the bondholder, "that our amended charter forbade an increase of our debt; the issue to you of bonds was an evasion of that amendment, to the amount of their face value. It is not as you allege, the substitution of one evidence of an old debt for another; of one form of security for another upon the same obligation. The original obligation was conditional. If the road had been really worth the guaranty we should never have been called on to pay anything. We are out of pocket by the amount of the bonds we issued, and you bought the bonds below par. You had notice of everything and you cannot complain." 'But,' argue the bondholders, 'we bought with no notice except what you printed upon the bond. You there stated that these bonds were "*intended* to extinguish the obligation of [your company] to * * * guaranty [the leased company's stock, which you admitted to be a valid obligation, though it might never cause you the outlay of a dollar], and "as a discharge of either party from all the obligations for the * * guaranty and security of said [stock]," and you also printed upon your bonds a covenant made by you at the same time, to set apart a certain percentage of receipts annually, to pay the interest upon your bonds, which your own courts

have held to be a valid tax (State of Louisiana *vs.* Maginnis, (1874) 26 La., Ann, 560). We had notice, it is true, of your amended charter, but you admit that the original guaranty was valid, and you admit that you got rid of the guaranty which might have become very burdensome to your company. You asserted on your bond *that the bonds were but a change in the security of an old debt;* that the debt was the same, but in a compromised form. *You are estopped from denying the fact that those bonds are an absolute substitution for your guaranty;* you are estopped from pretending that you have increased your debt. You might as well urge that if the recent Funding bill had passed, the debt of the United States would have been *increased* by the amount of the *new* bonds issued, or that a man's debts were to be measured by all renewals of his paper. including the whole series what had been taken up and destroyed. You have so dealt as to change the position of those dealing with you. · You cannot allege want of authority, because that turns upon the question of whether the debt was created before your amendment or afterwards, and as you have on the bonds asserted that this was a mere subscription of securities for the same debt, you can not now gainsay that, and until it appears that the debt was in reality a new one, the question of your power does not arise. The test is whether both parties could recede. Could the stockholders of the leased road, after receiving the bonds, demand their guaranty because it subsequently appeared more valuable? Besides, you have twice, [as a sovereign State] reasserted, in the most solemn way, that the obligation was valid by paying interest on the bonds. They have passed through many hands, and in ours were purchased, on the faith of your statements, under corporate seal and the signature of your President, and because we knew you had twice recognized their validity by paying the interest.' Would any Court of Appeal fail to condemn such a defense?

Now, that is our case, except that here it is a State, which by its only competent agent has asserted the fact, now sought to be denied by an incompetent agent (in this particular). It belongs to the Legislature to compromise claims against the State and its assertion that *the new obligation is a compromise for, and a discharge of,* the old valid debt, cannot be inquired into by a co-ordinate tribunal. The Judiciary cannot so hamper the exercise of that discretion which is inherent in the Legislative and Executive branches of the Sovereignty. This is a great question of policy. We submit that no court can arrogate to itself the right to nullify, under the guise of interpreting the law, a discretion within the power of the Legislature alone, because, forsooth, the sovereign has been ill served by the representative to whom the power has been intrusted.

Observe that these reasons were before this very Supreme Court of Louisiana held decisive.

In the case of State of Louisiana *vs.* North Louisiana and Texas Railroad Company (1873), 25 La. Ann., 65, the very point involved in this case was decided favorably to our view. The question there was whether act No. 97, of 1872, was unconstitutional as violating an amendment of the Constitution in not providing adequate means for the payment of the debt created thereby. The company had been chartered by act No. 108 of 1868, which authorized the issuing to the road of State bonds on similar conditions to those in the present case. By act No. 67 of 1872 (an act entirely similar to the act No. 95 of 1871), entitled,

"An act to authorize the North Louisiana and Texas Railroad to substitute stock of said company instead of second mortgage in favor of the State, and to release the said company from other liabilities to the State."

It was provided that, in lieu of the second mortgage, required by section 11 of Act No. 108 of 1868 to be

given the State for the ultimate payment of the bonds issued in accordance therewith, the company might give its stock to an equal nominal value, and thereupon *the company was to be relieved of all liability to the State, and the remainder of the bonds authorized by the charter were to be immediately issued* [67]. By the charter, the company was obliged to deposit in the State treasury, at prescribed dates, the money to pay the interest on the State bonds, and this obligation was secured by the mortgage in question. It is apparent, therefore, that the effect of the act of 1872 was to discharge all obligations by the company, and to create, exactly as here, subsequent to the Constitutional amendment, an absolute debt (the bonds of the State which were then issued in part payment of the stock) in lieu of a conditional one which might never be fulfilled, and which, moreover, was secured by a mortgage to the State, which was now relinquished. But the Supreme Court held the second act constitutional.

"The debt of the State so created" [by the act of 1868], says HOWELL, J. (69), "still exists, and the State is precluded from contesting its validity or that of the means first provided for its payment. *It is only the form and nature of the security required of the railroad company that have been changed.* * * * *Upon the policy of these enactments and transactions* we can give no authoritative opinion. * * Where there is doubt, a law will not be held unconstitutional. 3 M., 12, 553; 2 N. S., 472; 14 N. S., 138; 5 R., 383; 8 R., 416; 5 Ann., 96, 756; 8 Ann., 341; 9 Ann., 562; 11 Ann., 722. * * * *No provision of the Constitution inhibits the State from accepting from its debtors such settlements as the legislature may think judicious.*"

3. Lastly we invoke the doctrine so often laid down by this court, that when a contract is made upon the faith of an existing interpretation of a statute, it is a violation of the Constitution of the United States *to subsequently interpret the statute*, so as to impair the obligation of the contract. (Gelpcke *vs.* Dubuque, 1. Wall., 196; Lee

County *vs.* Rogers, 7 *Id.*, 181; Havemeyer *vs.* Iowa County, 3 *Id.*, 294; Mitchell *vs.* Burlington, 4 *Id.*, 270; Olcott *vs.* Supervisors, 16 *Id.*, 678; City of Kenosha *vs.* Lauson, 9 *Id.*, 477, and many others.) Now, as we have shown, in May, 1871, eight months before this litigation was begun, and over a year before we bought our bonds, the Supreme Court of Louisiana, in State *ex rel.* Salomon & Simpson *vs.* Graham, Auditor, 23 La. Ann., 405–7, declared that the conditional obligation to guarantee second-mortgage bonds of (both main and branch lines of) the New Orleans, Mobile, and Texas Railroad were in December, 1870, existing obligations to the full possible amount, and were to be counted in full in estimating the amount of the State debt at that time. This decision was rendered not a month after the exchange of this debt for the bonds in suit. We insist that we bought in July, 1872, upon the faith of the existing law, as declared by that decision, and that the present decision is, in fact, a reversal of that judgment. For, whereas, the decision of 1871, in interpreting the amendment to the State Constitution of December, 1870, and applying it to Salomon & Simpson's case, held that the conditional obligation of the State to the railroad was valid and in full force in December, 1870, the decision appealed from, in applying the same amendment as a defense to our claim, declares that the same obligation, at the same date, was null and void, *and for that reason only defeats our claim.*

Again, the same point was decided in July 1871, a year before our title accrued, in State *ex r* Mobile, and Texas Railroad Compan Auditor. The question there was wheth bound to issue to this company the State' vided by *section seventh* of the act of Febr upon the completion of certain portions of their *main* line, and the Louisiana Court held that a *mandamus* would lie against the State Auditor and Treasurer to

compel them to register the bonds as valid obliga
of the State, again deciding at that date that anc
conditional obligation of the State, similar to the o
suit, was an existing valid obligation of the State a
date of the passage of the constitutional amendment

In 1873 followed the decision of the State of Louis
vs. North Louisiana and Texas Railroad Comp
(ante 29) in which, as we have seen, in a cas
fortiori to this the Supreme Court held that a preci
similar obligation, issued under an act subsequen
time to the amendment (No. 97 of 1872), was not in
dated by that amendment, because, as we argue h
the new obligation represented an old debt prior to
amendment.

"*The law creating the debt is certainly not repealed. The debt c
State so created* [a conditional obligation to issue bonds under an
1868] *still exists;* and the State is precluded, in this proceeding at
from contesting its validity or that of the means first provided for its pay
*It is only the form and nature of the security required of the railroad
pany that have been changed.*"

State of Louisiana *vs.* Maginnis, 1874, 26 La. A
560, was a suit for taxes of the year 1871, against a
zen, who resisted on the ground that the tax of one
imposed by the tax acts of that year was unlawful. T
was the tax provided by the act No. 95 of April, 1
(*post* 69), to pay the coupons of our bonds.

"The respondent," said Judge Wily, "however, insists that ac
of the act of 1871, is unconstitutional, because the bonds issued und
*virtually created a debt in contravention of the constitutional limitati
$25,000,000; that the debt in lieu of which they were given had la
that is, the obligation of the State towards the second mortgage bonds o
New Orleans, Mobile and Chattanooga Railroad Company was conditi
upon the performance of certain work by said company, which they f
to perform.* There is no proof in the record that the company faile
comply with its contract. We can not presume they have, and there
released the State from the obligation, given in exchange for an oblig
incurred by it before the adoption of the constitutional amendment l
ing the State debt to $25,000,000."

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In this case the court decided that the amendment did not *per se* avoid the act of 1871. The only question unsettled was whether the alleged conditions precedent had been performed. Having shown that there were no conditions precedent this decision establishes our rights conclusively. It held that at the date of issue the bonds were lawfully issued, and as we bought thereafter, the State can not by reversing its first decision destroy our rights.

To summarize—we argue

1. Our title is founded upon the acts of 1869 and February, 1870, and can not be impaired by the subsequent amendment of December, 1870.

2. If not, the legislature in allowing the issue, and the Executive in issuing the bonds in suit, under act of 1871, declared that act to be a compromise for a former valid existing indebtedness by the State, and a settlement of a debt due to the State, and the assertion of that fact by two branches of the government can not be gainsaid by the courts of the State, the matter involved being within the exclusive control of the other branches of the government, and not the subject of judicial cognizance.

3. Under the doctrine of Gelpcke *vs.* Dubuque we are protected by at least four decisions of the Supreme Court of the State of Louisiana.

W. W. HOWE,

A. SYDNEY BIDDLE,
GEORGE W. BIDDLE,

SIMON STERNE,
Of Counsel with Plaintiffs in error.

MARCH 18th, 1881.

APPENDIX.

A.

No. 26 of 1869, (17th February, 1869,) of the Laws of the State of Louisiana. Entitled

"An act to expedite the construction of the railroad of the New Orleans Mobile and Chattanooga Railroad Company in the State of Louisiana."

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in general assembly convened:* "That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Louisiana be and it is hereby authorized to make and issue from time to time as hereafter provided its bonds, to be known as "Second Mortgage Bonds of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana," of such denominations as the company may elect, but to an amount not exceeding in the aggregate $12,500 for each and every mile in length of the main line of its railroad, westerly from the city of New Orleans and within the State of Louisiana, which said company shall construct, to wit: Of the main line extending from a point where it shall intersect and cross the western boundary of the city of New Orleans westward, toward and to the point where it shall intersect and cross the western boundary of the State of Louisiana, in the parish of Calcasieu, as the said main line has been located, or may be located in conformity with a power and authority vested in said company by the State of Louisiana, by an act of the general assembly of the State of Louisiana, approved August (19) nineteenth, 1868.

SEC. 2. *Be it further enacted, &c.*, That such bonds shall be numbered consecutively, and *shall be made payable to the State of Louisiana or bearer at such time as the company may designate therein*, not more than fifty nor less than forty years from their date, and shall bear interest at such rate as the company may designate therein, not exceeding eight per cent. per annum, payable semi-anually, and coupons for such interest shall be annexed thereto. The principal or interest of both of said bonds may at the option of the company be made payable in lawful currency of the United States, or in gold coin, or in English sterling, and if payable in sterling, £2500 sterling, per mile shall for the purposes of this act be deemed within the limitation of $12,500 per mile in section 1 of this act contained and *the place of payment of the principal and interest of said bonds* or any of them *may be either at the city of London in England, or the city of New York* as the company may elect and designate in such bonds.

SEC. 3. *Be it further enacted, &c., That the payment of the principal and interest of such bonds shall be secured by a mortgage to be executed by said company to the Governor of the State of Louisiana, as trustee, for whomsoever shall from time to time be holders of said bonds*, and also for the State of Louisiana and for the said company; and whomsoever shall from time to time be Governor of said State shall be the trustee under said mortgage, and be vested with the rights and powers conferred upon such trustee, and charged with the duties hereinafter imposed upon him. The said mortgage shall be a lien upon the whole of the said main line of railroad of said company within the State of Louisiana, and upon all the right of way, road-bed, rails, depots, stations, shops, buildings, machinery, tools, engines, cars, and real and personal estate within the State of Louisiana appertaining to or necessary

for the operation of said main line of railroad owned by the company at the date of said mortgage, or which may be acquired by it thereafter, and also upon the corporate franchises and privileges of said company, granted by the State of Louisiana, relative to the construction, operation, and use of said main line of railroad within the State of Louisiana. But the lien of said mortgage shall be subject and subordinate to a prior lien, to the extent next hereinafter specified, in favor of a first mortgage to be made by said company to secure bonds to be known as "First Mortgage Bonds of the New Orleans, Mobile and Chattanooga Railroad Company." Such first mortgage bonds, and the mortgage securing the same, shall be a prior lien only to the extent of $12,500, payable in coin or currency, or £2500 sterling, of such first mortgage bonds, and the interest which may accrue thereon at the rate of not exceeding eight per cent. per annum, payable semi-annually, upon each and every mile of the aforesaid main line of railroad within the State of Louisiana, including all the right of way, road-beds, rails, depots, stations, shops, buildings, machinery, tools, engines, cars, and real and personal estate within the State of Louisiana pertaining to or necessary for the operation of said main line of railroad owned by the company at the date of said mortgage, or which may be acquired by it thereafter, and of the corporate franchises and privileges of said company granted by the State of Louisiana relative to the construction, operation, and use of said main line of railroad within the State of Louisiana; the principal of such first mortgage bonds not to be payable in less than forty or more than fifty years from their date, unless in case of default in payment of interest thereon. In case of a sale of said railroad, or any part thereof, for the satisfaction of said first and second mortgage bonds, or either of them, the proceeds of the rolling-stock and personal

property which may be sold shall be deemed to appertain to that portion of said main line of railroad within the State of Louisiana which shall have been constructed and operated, and shall be apportioned equally upon each mile thereof, and shall be deemed proceeds of the completed portion of said railroad, and the lien of said first mortgage shall be governed by the further provisions further hereinafter contained.

SEC. 4. (*a.*) *Be it further enacted, &c.*, That the said mortgage to the Governor of the State of Louisiana shall describe the second mortgage bonds thereby secured, and shall also provide for the payment by the company to the trustee of a sinking fund for the gradual redemption of the principal of the said bonds. The payments of the said sinking fund shall commence in five years from the date of said mortgage, and shall be made annually thereafter, and each payment shall not be less than one-half of one per cent. of the total amount of the principal of all bonds which shall, up to the time of such payment, have been guaranteed by the State of Louisiana as hereinafter provided, whether outstanding or surrendered to the trustee, for the purposes of the sinking fund, as hereinafter provided.

(*b.*) *The money so paid to the said trustee shall be forthwith paid by him as soon as received into the treasury of the State, and shall be paid out only on the warrant of said trustee for the second mortgage bonds of said company surrendered to him; and all bonds thus surrendered and paid for shall be forthwith stamped by the trustee, "Surrendered to the sinking fund, and not negotiable," in some effectual manner, so that they can not be again issued, and shall be immediately thereafter deposited in a treasury of the State, and the number and amount of each and every bond so surrendered to the sinking fund shall be entered by the trustee and by the treasurer of the State of Louisiana*

in books to be kept by them for that purpose, which books shall at all times be open to the inspection of the officers of the company. But the interest on such surrendered bonds shall be payable as it accrues to the said trustee, according to the tenor of the coupons, and become part of the sinking fund, and shall be deemed secured by said mortgage in like manner, as if said surrendered bonds were still outstanding, and such payment of interest on the surrendered bonds shall continue until the sinking fund shall amount to a sufficient sum to pay all the second mortgage bonds outstanding.

(*c.*) The trustee shall not apply said sinking fund nor any part thereof to the purchase of said bonds at any greater price than par and accrued interest. The mortgage securing said bonds shall contain suitable provisions for advertising for sealed proposals to the trustee to surrender bonds for the purposes of the sinking fund; and the trustee shall give preference to the proposals most favorable to the company, provided they do not exceed par and accrued interest.

If, on any occasion, sealed proposals are not received by the trustee within the time limited by the advertisement for the requisite number of bonds within the aforesaid limit of price to absorb the whole amount of sinking fund on hand, the trustee shall, within three days thereafter, by a certificate in writing, specify the amount of bonds so deficient, and appoint three commissioners to draw by lots the requisite amount of bonds to supply the deficiency. Said commissioners shall forthwith, after their appointment, draw by lots from the numbers of all the second mortgage bonds then outstanding numbers of bonds to the amount sufficient to supply such deficiency, and shall make and sign the report specifying the numbers so drawn by them, and shall attach to their reports an affidavit sworn to by each of them before some officer of the State of Louisiana authorized

to administer oaths, stating that such drawing was in all respects impartial, fairly conducted, and that said report is true.

(*d.*) The said certificate of the trustee and reports of the commissioners shall be filed in the office of the Secretary of State of the State of Louisiana, *and thereupon the holders of the bonds bearing the numbers so drawn by the commissioners and specified in their report shall be bound to surrender the same to said trustee on receiving from him his warrant on the State treasury for the amount of the principal of said bonds with the interest accrued thereupon* up to the time of the expiration of the notice mentioned in section 5 (five) or such earlier time as such warrant may be delivered.

SEC. 5. *Be it further enacted, &c.*, That immediately after the filing of said report of said commissioners, the company shall cause a notice to be published, specifying the numbers of the bonds so drawn and requiring the holders thereof to surrender the same to said trustee on or before a specified day which shall not be less than thirty (30) days after the first publication of said notice. Such notice shall be published in a daily newspaper in the city of New Orleans, in at least two daily newspapers in the city of New York, for four successive weeks, at least three times in each week, and upon the expiration of the time limited in said notice, the interest on the bonds, numbers of which are specified in such notice, shall cease and no interest shall accrue thereon after that time, or be payable except to the sinking fund as hereinbefore provided. *Provided, however*, that if any of the bonds so drawn shall be payable in the city of London, further publication of said notice shall be made for at least four successive weeks, at least three times in each week, in two newspapers published in the city of London, and the date specified for the delivery of said last-mentioned

bonds shall be at least forty-five days from the time of the first publication of the last-mentioned notice, and the interest on the last-mentioned bonds shall cease to accrue (except to the sinking fund as hereinbefore provided), or the expiration of the last-mentioned notice. The payments for the bonds surrendered to the sinking fund or drawn for the sinking fund shall be made in currency, coin, or sterling, or their equivalent respectively, according to the tenor of the bonds drawn or surrendered; and the annual payments to be made by paying to the trustee for the purposes of the sinking fund shall be in like manner, to be made in currency, coin, or sterling, or their equivalent, as the principal of said bonds shall be payable. In all cases where any payment is required by this act, or agreed by the company to be made in sterling, if such payment is reduced to currency, the premium on gold in the city of New York and the rate of exchange on London ruling at the time when such payment is due, shall be included; and whenever any payment so required or agreed to be made in coin is made in currency, the premium on gold ruling in the city of New York at the time the payment is due shall be added, and in case any decree or recovery in any court of this State upon said second mortgage bonds or any of them, or upon said mortgage, the amount due on such of said bonds as may be payable in coin or sterling shall be ascertained by reducing coin and sterling respectively into currency, according to the foregoing rules. Whenever the term currency is used in this act it shall be deemed to mean obligations of the United States of America, which are or shall be by the laws of the United States made a legal tender in payment of debts.

SEC. 6. *Be it further enacted, &c.*, That the said mortgage to the Governor of the State of Louisiana shall

contain a further provision that *in case default shall be made in payment of the interest of said bonds* or any of them or of the said sinking fund or of any part thereof, and the same shall remain in arrear for sixty days after becoming due and being demanded of said company, the principal of all of the bonds secured by said second mortgage and then outstanding, shall, upon the expiration of said sixty days, become due and payable, and said mortgage shall contain suitable provisions for the sale of said railroad and appurtenances by the trustee in case of default in the conditions of said mortgage.

SEC. 7. *Be it further enacted, &c.*, That the said mortgage shall, after its execution by the company be delivered to the Governor of the State of Louisiana, and if the same shall be in conformity with the provision of this act, he shall endorse his approval in writing thereon, and cause the said mortgage thus approved to be recorded at once in the office of the Secretary of State. Such approval by the Governor shall be conclusive as to the sufficiency of the form and execution of said mortgage, and as to its conformity with the provisions of this act; and such recording shall be constructive notice to all persons of the lien of said mortgage, and such lien shall be paramount to all other liens and encumbrances upon the mortgaged premises, except the aforesaid lien of the first mortgage to the extent of $12,500, or £2,500 sterling, and interest on each and every mile of said main line of railroad within the State of Louisiana.

SEC. 8. (*a.*) *Be it further enacted, &c.*, That when the said mortgage shall have been so delivered, approved, and recorded, and one continuous portion or section of forty miles in length of the said main line of railroad within the State of Louisiana, shall have been constructed by

the company and the rails laid thereon, *the company may deliver to the Governor of the State of Louisiana $500,000, or £100,000, sterling, of such second mortgage bonds, and the Governor shall thereupon subscribe a certificate to be written or printed upon each of said bonds in the following words:—*

(*b.*) "THE PAYMENT OF THE PRINCIPAL OF THE WITHIN BOND WHEN DUE, AND OF THE INTEREST THEREON AS IT ACCRUES, IS GUARANTEED BY THE STATE OF LOUISIANA PURSUANT TO THE PROVISIONS OF THE ACT OF THE GENERAL ASSEMBLY OF SUCH STATE AUTHORIZING SUCH GUARANTY,"

And shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the Secretary of State, and the bonds shall then be delivered to the company for its general uses and purposes authorized by its charter.

SEC. 9. (*a.*) *Be it further enacted, &c.*, That upon the construction of each additional section or portion of forty miles in length of said main of railroad within the State of Louisiana, *the company may execute and deliver to the Governor of the State of Louisiana a further amount of such second mortgage bonds* equal to $12,500, or £2500, sterling, as the company may elect for each and every mile in length of said main line of railroad within the State of Louisiana so constructed (and for which bonds shall not have been previously guaranteed as herein provided), and thereupon

(*b.*) THE SAID GOVERNOR SHALL SUBSCRIBE A CERTIFICATE OF GUARANTY UPON EACH AND EVERY OF SUCH BONDS IN THE FORM PRESCRIBED IN SECTION EIGHTH OF THIS ACT, AND THE SAME SHALL BE SEALED AND ATTESTED IN LIKE MANNER, AND SHALL FORTHWITH BE DELIVERED TO THE COMPANY FOR ITS GENERAL USE AND PURPOSES AUTHORIZED

BY ITS CHARTER; and when the whole of said main lin
of railroad within the State of Louisiana shall have bee
constructed by said company, all the residue of th
second mortgage bonds authorized by this act may b
executed by the company, and certificates of guarant
thereon in the form aforesaid shall be subscribed by th
Governor, and sealed and attested as hereinbefore pro
vided; and such guaranteed bonds shall forthwith b
delivered to the company for its general uses and pu
poses authorized by its charter.

SEC. 10. *Be it further enacted, &c.*, THAT THE SIGNATUR
OF THE GOVERNOR TO THE CERTIFICATE OF GUARANT
SHALL BE CONCLUSIVE EVIDENCE IN FAVOR OF THE HOLDE
OF EVERY BOND SO CERTIFIED, THAT THE CONDITIONS O
THIS ACT HAVE BEEN COMPLIED WITH ON THE PART OF TH
COMPANY, AND THAT SAID BONDS HAVE BEEN DULY MAD
AND REGULARLY CERTIFIED AND ISSUED PURSUANT TO TH
PROVISIONS OF THIS ACT; AND EVERY SUCH CERTIFICAT
OF GUARANTY, WHEN SO SUBSCRIBED, SHALL BE A VALI
AND BINDING OBLIGATION OF THE STATE OF LOUISIANA I
FAVOR OF WHOMSOEVER SHALL, FROM TIME TO TIME, B
THE HOLDER OF THE BOND BEARING SUCH CERTIFICATI
AND THE STATE OF LOUISIANA HEREBY PLEDGES ITS PUBLI
FAITH AND CREDIT TO THE PERFORMANCE OF SUCH GUAR
ANTY, ACCORDING TO ITS TERMS.

SEC. 11. *Be it further enacted, &c.* (*a.*) That nothin
in this act contained shall impair or restrict the power
heretofore granted to said company, to issue bonds an
to mortgage its corporate property and franchises, excep
that the said company shall not have power to make an
mortgage or create any incumbrance upon said mai
line of railroad within the State of Louisiana, whic
shall have priority over said second mortgage, to an
greater extent than $12,500 in coin or currency, o

£2500 sterling, and the interest thereon at a rate not exceeding eight per cent. per annum upon each and every mile of the entire length of said main line of railroad within the State of Louisiana.

(*b.*) And in case of a foreclosure of any mortgage upon the said main line of railroad, before the whole of the said main line of railroad shall have been completed, the State of Louisiana, shall, may, through its governor, require that part of said main line of railroad within the State of Louisiana, which shall have been constructed and in respect of which the State of Louisiana shall have guaranteed second mortgage bonds, be sold separately, and the proceeds or the part so sold together with its due proportion of the proceeds of the cars, engines, and personal property of the company, shall constitute a fund upon which the first moatgage shall be a first lien to the extent one of securing first mortgage bonds to the amount of $12,500 in coin or currency, or £2500 sterling per mile, for every mile of constructed road thus sold, with the arrearages of interest thereon.

(*c.*) And after paying such amount of first morgage bond and interest out of the said fund, the surplus or so much thereof as shall be necessary, shall be applied to the payment of the said second mortgage bonds guaranteed by the State of Louisiana, and all arrearages of interest thereon. Or in case such sale shall be made under the said second mortgage, the sale may be made subject to said first mortgage, and the portion so sold shall be released and discharged from the said first mortgage and the lien and operation thereof, on the surrender by the purchaser to the trustee under said first mortgage of first mortgage bonds to the amount of $12,5000, or £2500 pounds sterling, and the unpaid coupons thereunto appertaining for each and every mile of said railroad so sold or on payment by the purchaser to said trustee of a sum sufficient to discharge a like

amount of first mortgage bonds and the coupons of any arrears thereon.

SEC. 12. (*a.*) *Be it further enacted, &c.,* That said company shall cause the survey and location of the whole of said main line of its railroad within the State of Louisiana to be completed within eight months after its acceptance of this act hereinafter provided for, and shall cause a section of at least forty miles continuous thereof to be constructed and the rails laid thereon within twelve months after such survey and location shall have been made, and shall cause the whole of its said main line of railroad within the State of Louisiana, to be constructed and the rails laid thereon within three years after such survey and location shall have been made.

(*b.*) And in case of the failure of the said company to survey, locate and construct the said main line of railroad within the State of Louisiana in the manner and within the time limited in this section of this act for such survey, location and construction, the obligation of the State of Louisiana, by virtue of this act to guaranty the second mortgage bonds of said company (as in this act provided) for or upon that portion of the said main line of railroad not constructed within the time limited shall cease and determine, and none of said second mortgage bonds for or upon that portion of said main line of railroad not constructed within the time limited shall be guaranteed by the State of Louisiana. But no failure of the company to complete said railroad shall affect or forfeit the rights of said company to maintain and enjoy such portions of its railroad as it shall have completed, nor any other rights or franchises secured to the said company under its charter or by the laws of the State of Louisiana, or of any other State relating thereto.

(*c.*) *And be it further enacted* That the rails to be laid by said company upon the said main line of its railroad

within the State of Louisiana, shall be of the weight of not less than sixty pounds to the lineal yard.

SEC. 13. *Be it further enacted, &c.*, That whereas, the line of railroad of said company as intended to be constructed will extend through several States, it is hereby declared that the cars and engines and all personal property which said company may acquire shall, for the purposes of this act and for all mortgage purposes, be deemed part of the realty and be apportioned according to the number of miles of railroad constructed and owned by the company in each State, so that the number of cars and engines and amount of personal property which shall be deemed to belong to the portion of the company's railroad constructed and lying within the limits of either of said States shall at all times bear the same proportion to the whole number of cars, engines, and whole amount of personal property owned by the company which the number of miles of railroad of the company constructed and lying within said State shall bear to the aggregate number of miles of the railroad of the company constructed in all of said States.

SEC. 14. *Be it further enacted, &c.*, That said company may accept the terms, conditions, and provisions of this act at any time within ninety days from the date of its passage and approval, by a written acceptance, signed by a majority of the directors of the company and addressed to the Governor of the State of Louisiana; and in case of such acceptance by said company, the said company shall be entitled to the benefit of the provisions of this act, and shall possess and enjoy the rights and franchises granted to said company by the State of Louisiana in this act and heretofore, *and such grant and the engagement herein made and entered into on the part of the State of Louisiana, shall be deemed to be and shall be binding*

contracts between the State of Louisiana and the said company, not to be impaired, disturbed, or modified by subsequent legislation, except with the consent and on the petition of said company.

SEC. 15. *Be it further enacted, &c.*, That the said company, with the consent of the owners of lands fronting upon any navigable water-course, or after such lands have been acquired by the company by purchase, release, donation, or in any other manner, in accordance with the laws of the State of Louisiana, may erect, construct, and thereafter maintain and use wharves, warehouses, depots, or other buildings and structures in and upon the margins, or upon the portions of the margins reserved to public use, or any and all navigable rivers, bayous, or water-courses in the State of Louisiana, whenever the same may be deemed by a majority of the directors of the company necessary and requisite for the legitimate and convenient transaction of its business. And within the limits of incorporated cities and towns, the mayor and a majority of the council of said city or town may authorize the construction of said wharves, warehouses, depots, or other buildings and structures, in front of all public squares or streets that may be bounded by such navigable water-course.

And be it further enacted, That the officers, agents, and servants of said company be and they are hereby exempted from jury duty and from military duty, except in case of insurrection or invasion.

And be it further enacted, That the said company, for the purpose of connecting its railroad with the railroad of other companies and with mines and manufactories within the State of Louisiana, is hereby authorized and empowered to construct, maintain, and use, by running thereon its engines and cars, such branch railroad and tracks as it may find necessary and expedient to own

and use; and also to extend, with two tracks and necessary turnouts, its railroad heretofore authorized by the State of Louisiana upon the neutral ground in Claiborne street, in the city of New Orleans, and upon and along said neutral ground in Claiborne street to Toledano street in said city; thence by such a course or route as shall be deemed most proper and expedient by a majority of the directors of said company, to a junction with the line of the railroad which said company has been heretofore authorized by the State of Louisiana to construct westerly from the city of New Orleans; *Provided, however*, that for its crossing of the new canal in the city of New Orleans, the said company shall construct and maintain a drawbridge in the same manner as has been heretofore authorized by the State of Louisiana for the crossing of of Carondelet canal by the railroad of said company; and there is hereby granted to said company the right to locate, construct, maintain, and use a passenger depot, with offices and apartments suitable for its legitimate business, upon that part or portion of the levee or street and grants in the city of New Orleans bounded by Canal, Delta, and Poydras streets and a line parallel to and one hundred and fifty feet easterly from Delta street; and for the construction of a freight depot and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets, and portions of levee in said city bounded by Girod, Water, and Calliope streets and a line parallel to and two hundred and ninety feet easterly from Water street; *Provided* said company shall enclose or occupy that portion of the blocks of ground within said last-named limits, which is the private property of individuals, until said company has acquired the title thereto; and said company shall thereafter, if requested by said city, extend the wharf in front thereof equal with the present wharf of the northerly corner of the outer block within said limits, recently sold by said city and now owned by said company.

And be it further enacted, That the said company is hereby authorized and empowered to locate, construct, and build, and thereafter to own, maintain, manage, and use a railroad, with one or more tracks and suitable turnouts, from any point upon the main line of its railroad, as the same shall be hereafter located, in the parish of St. Landry or Calcasieu, towards and to any point upon the line between the State of Louisiana and the State of Texas, in or south of the parish of Rapides; and all the powers, privileges, grants, and franchises which have been heretofore granted to said company, and all the powers, privileges, grants, and franchises which are by this act granted to said company for the construction and maintenance of its main line of railroad within the State of Louisiana, shall be and are hereby made applicable to said branch railroad; and, for all the purposes of this act, the said branch railroad shall be deemed and taken to form and constitute a part of the said main line of said railroad within the State of Louisiana in this act designated and referred to.

SEC. 16. *Be it further enacted, &c.*, That this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved, February 17th, 1869:

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

GEORGE E. BOVEE,
Secretary of State.

B.

No. 31, of 1870 (21st February, 1870), of the Laws of the State of Louisiana, Entitled

"An act relative to the New Orleans, Mobile and Chattanooga Railroad Company, and to regulate judicial proceedings in certain cases under the charter of said company, and the laws of the State relative thereto, heretofore passed, and to declare and define the powers and liabilities of the said company, and facilitate and aid by grant of bonds, the construction and secure the maintenance of the railroads of said company within the State of Louisiana, and to appropriate certain lands in the city of New Orleans for public use, and to provide for building one or more branches to the main line of said railroad."

Sec. 1. (*a.*) *Be it enacted, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That the ordinances adopted by the city of New Orleans, bearing date the sixteenth day of February, 1867, and the fifteenth day of November, 1867, and the seventeenth day of June, 1869, relative to the construction, use, and maintenance of the railroads and depots of the said company, and all those portions of said ordinances which provide for the opening and grading of streets in said city, and the grant of the use of the same, and of other streets to said company for its tracks, switches, turnouts, and depots, or for other purposes connected with its railroads, be and the same are hereby ratified and confirmed and declared to be operative from their date; and the said city is hereby authorized and required to lay out, open and grade the streets mentioned in said ordinances to be opened and graded, and to fulfill the obligations and assumptions contained in said ordinances without further delay and without

further authority than shall be afforded by this act; and it shall be the duty of the city authorities within five years after demand made upon the mayor by the said company to direct and require the city surveyor to proceed to open, grade, and fit the said streets for the purpose specified in the said ordinances according to the conditions of the same; and in case of any neglect or refusal by the said city, the said company may apply to, and it shall be the duty of any court of competent jurisdiction to compel and enforce the completion of said work without delay; and the said company may proceed, if it prefers, to open, grade and prepare the streets mentioned in said ordinances for the use aforesaid; and whatever charges, cost or expenditures that have been heretofore required or occasioned by the neglect or refusal of the said city to fulfill their obligations, assumptions or duties under the ordinances aforesaid relative to the said streets, or that may be hereafter required or occasioned by the refusal or neglect after the notice aforesaid (required) by this act, may be recovered by the said company from the said city; and,

(*b.*) *Be it further enacted, &c.*, That said company be and is hereby authorized and empowered to locate, construct, maintain and use for the passage of its engines and cars, the tracks of its railroads (with the requisite curves to and from the same), from the levee to the line designated in the said ordinances of the city of New Orleans for the extension of Claiborne street along and upon the portion of Elysian Fields street and intervening streets, originally designated for the two central banquettes or walks in Elysian Fields street, the said banquettes being two strips of ground twelve feet in width, one upon each side of and adjoining the line, said to be owned by the Pontchartrain Railroad Company, in the central portion of said street; and no ordinance heretofore passed, or

which may hereafter be passed by the city of New Orleans, and no act of any party or parties whomsoever and no act of any court or judge heretofore done, or which may hereafter be done, shall be of any force or validity to prevent the location, construction, maintenance and use of the said tracks as aforesaid; and the said company is hereby authorized and empowered to remove from the said banquettes any material or structure which it may deem necessary to remove in order to construct its said tracks as aforesaid, provided said company shall not materially impair the drainage of said street.

SEC. 2. (*a.*) *Be it further enacted &c.*, That the said company, its officers and employés, shall not, in any case, be liable for any debts contracted or liabilities incurred by any person or persons who shall have contracted or who shall contract with it to construct any portion of its road, its buildings or appurtenances, or its rolling stock, or to furnish any material or labor to be used for such construction, or for its maintenance and operation; nor shall said company, its officers or employés, in any case be liable for any injury to person or property or loss of life which shall be caused by any act or omission of any person or persons so contracting with it or of any of his or their employés or agents.

(*b.*) But the said company may, at its option, at all times, when moneys shall become due to any contractor or contractors for the construction of any portion of its railroad, or of any permanent structure or structures upon the line thereof, or connected therewith, retain out of such moneys a sufficient amount to pay in full any sum or sums then due to an employé or any of the employés whom it shall elect to pay such contractor or contractors for labor performed upon such work, or to any person or persons for materials furnished to any

such contractor or contractors to be used in the performance of his or their contract or contracts, and may pay the same to such employé or employés or person or persons, and when so made, such payment shall be a legal discharge to the amount thereof of the indebtedness of said company to such contractor or contractors; *provided, however*, that such payments shall be made within thirty days after such moneys shall become due from such company; and if not so made, such contractor or contractors shall then and from thenceforth be entitled to the same. No assignment of mortgage or other act of any such contractor or contractors, made or done either before or after such moneys shall so have become due him or them, shall be of any validity to interfere with or prevent the retaining and payment of any such sum or sums of money, or deprive such payment of the legal effect herein above declared; and no attachment, execution, trustee process, garnisheement, injunction, or notice of legal proceeding, made, obtained, issued, or taken after the passage of this act, in behalf of any party or parties whomsoever, shall create a lien upon, or bind, or hinder, or stay the payment of any moneys due or to become due from the said company to any person or persons, corporation or corporations, whomsoever or whatever, for any service rendered, labor performed, or materials or supplies furnished for the construction, maintenance, or operation of the railroad of said company, or any structure or structures, or fencing upon the line thereof; but all payment on any such account or accounts may be made by said company at its option, free from any legal obstruction or hinderance directly or to the party or parties with whom said company shall have had dealing, out of which said company shall have become due.

SEC. 3. (*a.*) *Be it further enacted, &c.*, That said company, its officers or employés shall not be liable in any sum

whatever of damages or costs in any action brought by any party against it or them, or any or either of them, for any injury to the person or loss of life or injury to or detention or loss of baggage caused by any accident or alleged carelessness or negligence on the part of said company, is officers or employés, and sustained by any person while riding or being transported free of charge upon its railroads, or any part thereof, or upon any other railroad or transportation line occupied and operated by said company, or while the person whose death or personal injury shall have been caused by any such accident or alleged carelessness or negligence shall have been at work rendering any service as an employé of said company, or as an employé of any person or persons with whom said company may have contracted for such work or service, upon or in connection with its railroads or any other railroad or transportation line occupied and operated by it. And all such free passengers travel, and all such employés so labor and render service upon said railroad, and upon all other railroads and transportation lines occupied and operated by said company, at their own risk as to personal injury or loss of life, or loss or detention of or injury to baggage resulting from accident or alleged carelessness or negligence on the part of said company, its officers or employés; and the said company shall not be subject to any liability to any party for any such personal injury or loss of life.

(*b.*) *And be it further enacted, &c.*, That no distinction or discrimination shall be made by the New Orleans, Mobile and Chattanooga Railroad Company on account of race, color, or pevious condition between the persons employed in the construction and maintenance of their railroad, or between passengers either in their railway carriages, their depôt, buildings, or upon their ferry-boats within this state.

SEC. 4. (*a.*) *Be it further enacted, &c., That said company be and it hereby is authorized to issue bonds and make contracts payable in gold coin of the United States or of any foreign country in all cases in which it shall elect to do so:* and the provisions of its charter shall apply to all such bonds and contracts so made as if the same had been made payable in lawful currency of the United States.

(*b.*) *And be it further enacted, &c.,* That any bridge which shall be constructed by said company upon the located line of its railroad west of the Mississippi River over and across either the Bayou La Fourche or the Little Texas Bayou shall have a well-constructed and suitable draw therein which, when open, shall give a clear space of not less than eighty feet for the passage of vessels; and the said company shall at all times open the said draw for the passage of all vessels requiring the same excepting during and for ten minutes prior to and after the time for the passage of the mail and passenger trains of said company; and the said company shall not be required to construct a draw in any bridge over and across any other stream or bayou on the line of its railroad between the Mississippi River and the State of Louisiana, in the direction of the city of Houston in Texas, except that the requirements of commerce shall demand a draw at its crossing of the Calcasieu.

(*c.*) *And be it further enacted &c.,* That there be and is hereby granted to said company the right to locate, construct, maintain and use a ferry landing for its ferry for the transportation of passengers and property, its locomotives and cars across the Mississippi River at and upon the wharf and *batture* rights owned by said company at and below Calliope street, in the city of New Orleans, or at and upon any wharf and *batture* rights in the city of New Orleans above Calliope street, or in the

city of Jefferson or Carrollton, which may be acquired by said company for such purposes; and such ferry landing and the wharf and *batture* requisite therefor, when so located and constructed by the said company shall not be used for any other purpose than for such ferry by any party or parties whomsoever, without the consent of the said company.

(*d.*) *And be it further enacted, &c.*, That there be and is hereby granted to the said company the right to locate, construct, and maintain and use the passenger depot not exceeding five hundred feet in length, with offices and apartments suitable for its legitimate business and with the requisite tracks and turnouts upon any part of the neutral ground in the central portion of Claiborne street, between St. Louis street and Canal street, or between Canal street and Lafayette street, whenever the directors of the said company shall deem such passenger depot requisite and necessary for the interest of said company.

(*e.*) *And be it further enacted, &c.*, That the said company be and is hereby empowered and authorized to locate, construct, and build, and thereafter to own, maintain, manage, and use a railroad with one or more tracks and suitable turnouts from any point on the main line of its railroad as the same has been or may be hereafter located in the parish of St. Martin, or in the parish of Lafayette, northwesterly on such a course or route as the directors of the said company may deem most expedient and for the interest of said company to adopt towards and to Shreveport, in the parish of Caddo via. Alexandria (or some point near Alexandria) in the parish of Rapides; and also a railroad with one or more tracks and suitable turnouts from any point upon its main line of railroad, as the same has been or may be

hereafter located in the parish of Iberville, northerly or north-westerly, as the directors of said company may deem most expedient and for the interest of said company to adopt toward and to any point on the Mississippi river, in the parish of West Baton Rouge and all powers, privileges, grants, guarantees, and franchises which have been heretofore granted, or which are by this act granted to said company for the construction, maintenance and use of its main line of railroad within the State of Louisiana, westerly from the city of New Orleans shall be and are hereby made applicable to the said lines of railroad to Shreveport and to said point in the parish of West Baton Rouge; *Provided, however, that such provisions of the act, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana," approved February 17th, 1869, as relates to the guarantee of the second mortgage bonds of said company, shall be applicable only to such parts or portions of the said lines of railroads to Shreveport, and to said point in the parish of West Baton Rouge, as shall be surveyed, located, and constructed within five years from and after the acceptance of this act by said company; and the said provisions of said act shall be applicable to such parts or portions of said last-mentioned lines of railroad as shall be surveyed, located, and constructed within the time last aforesaid.*

SEC. 5. *Be it further enacted &c.*, That the grant made to the said company, in and by the act entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile, and Chattanooga Railroad Company, in the State of Louisiana," approved February 17th, 1869, "of the right to locate, construct, maintain, and use a passenger depot, with offices and appartments suitable for its legitimate business, upon that part or portion

of the levee or streets and grounds in the city of New Orleans bounded by Canal, Delta, Poydras streets, and a line parallel to, and one hundred and fifty feet easterly from Delta street, and for the construction of a freight depot, and for other purposes of its legitimate business, to enclose and occupy the blocks of ground, parts of streets, and portions of levee in said city, bounded by Gerod, Water, and Calliope streets, and a line parallel to, and two hundred and ninety feet easterly from Water street, provided said company shall not enclose or occupy that part or portion of the blocks of ground within said last-mentioned limits which is the private property of individuals, until said company has acquired the title thereto," be, and the same is hereby confirmed, and is declared to be and is and shall be in exclusion of any and all claim or claims on the part of the city of New Orleans, to the possession, occupancy, use, or disposition of or control over the said premises, or any part thereof, and for all compensation therefor; and the mayor and common council of said city, and all municipal authorities thereof are hereby prohibited and declared incapable from passing any ordinance or doing or authorizing any act interfering with the said ground, or in any way obstructing the enjoyment thereof by said company, or any benefits or advantages to be derived therefrom; and all ordinances heretofore passed or which shall hereafter be passed, and any act done or to be done by the said mayor and common council, purporting or intended to convey or grant to any party or parties other than the said The New Orleans, Mobile and Chattanooga Railroad Company, the right to possess, use, and enjoy or to dispose of or exercise any control over the said premises herein above mentioned and described, or any part thereof, are hereby declared and shall be treated and held to be utterly null and void to all intents and purposes; and all persons are forbidden to enter upon or interfere with

the said premises, or any portion thereof, under any such pretended ordinances; and all such acts are hereby declared trespass, and all persons who shall commit them, or any of them, shall be held to be and may be proceeded against as wrong-doers.

SEC. 6. *Be it further enacted, &c.*, That all portions of the levee or streets, and grounds in the city of New Orleans, lying within the following named limits or boundaries, viz: The southerly (or upper) line of Canal street from the Mississippi river to the easterly line of Water street, the easterly line of Water street from the southerly line of Canal street to the southerly (or upper) line of Gerod street, the southerly line of Gerod street from the easterly line of Water street to the easterly line of the lands designated for the location of the freight depot of the New Orleans, Mobile and Chattanooga Railroad Company, the easterly line of said depot lands from the southerly line of Gerod street to the northerly (or lower) line of the *batture* rights owned by said company, the northerly (or lower) line of said *batture* rights from said depot lands to the Mississippi river, and the Mississippi river from the northerly (or lower) line of said *batture* rights to the southerly line of Canal street, is hereby expressly dedicated to public use, and shall forever remain open for such use, and no part of said land or of the accretions and wharf in front of same, shall ever be enclosed or built upon, or granted for the ferry landings, or exclusively appropriated or used by any individual or individuals, corporation or corporations, or by the municipal authorities of the city of New Orleans: *Provided, however*, That said company may construct, maintain, and use across or upon said lands, or any part thereof, its railroad tracks, turn-outs, and switches from its main tracks on Water street, as may be necessary for the purposes of ingress to or egress from its depots; and the said

city of New Orleans, and the mayor and common council, and all municipal authorities thereof, are hereby expressly prohibited from passing any ordinance, making any grant, entering into any contract, or doing any act inconsistent with the provisions of this section of this act, or which shall prevent or hinder the laying of the tracks of the railroad of the said New Orleans, Mobile and Chattannooga Railroad Company, within the corporate limits of the city of New Orleans, upon the line or route heretofore authorized by the State of Louisiana, which have been surveyed or located therefor, or which have been designated upon the maps of such tracks filed by the said company, or which may be hereafter surveyed and located therefor in or upon the streets of said city, or in or upon any other lands in the said city, or which shall obstruct, disturb, or interfere with such tracks, or with the full, free and perfect enjoyment and use, other than by the said company, when laid upon such routes and lands; and any and all ordinances, grants, contracts, or acts in violation hereof heretofore passed, made, entered into, or done, or hereafter to be passed, made, entered into, or done by the said city of New Orleans, or the mayor and common council, or municipal authorities thereof, are hereby declared illegal, null and void; and the same shall be so treated and held in all places and under all circumstances.

SEC. 7. (*a.*) *Be it further enacted, &c.*, That in order to invite immigration to this State, extend the cultivation and increase the product of that part of its territory lying west of the Mississippi river, augment the commerce and growth of the city of New Orleans, and promote the general prosperity of the people of this Commonwealth, it is of vital importance that the railroad of the said The New Orleans, Mobile and Chattanooga Railroad Company be extended westerly from the city of New Orleans, in this

State, to the city of Houston, in the State of Texas; and that the same be constructed and put in operation between the said cities within the shortest practical time; and that to induce said company to so extend the said railroad, and incur the inconvenience and increased cost of the speedy construction of the same, and to insure its construction and opening for traffic, between said city of New Orleans and Houston, within the time hereinafter specified, this State doth grant and will pay and deliver unto said company the bonds of the State to the amount of $3,000,000; the same to be made and delivered at the time upon the terms and conditions and in the manner hereinafter provided. All such bonds shall be signed by the Governor, and countersigned by the Secretary of State, and sealed with the seal of this State; provided, that all fees for affixing the seal of the State shall be paid by the company; said bonds shall be of such denominations as said company shall elect; shall be numbered consecutively and registered in the book of the auditor, and payable to the said company or bearer, in forty years from their date with interest at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July, of each year, in the city of New York, for which interest coupons shall be attached to the said bonds, each of which coupons shall have at the end thereof a fac-simile of the signature of the Treasurer of this State as such, and be stamped with the number of the bond to which it shall be attached; and the Governor is hereby authorized, directed and required to procure such bonds and coupons to be engraved and printed, and to sign and seal the same and cause the same to be countersigned and registered as aforesaid; and to pay and deliver the same to the said company as, and when the said company shall become entitled thereto as in this section of this act provided. The Secretary of State is hereby directed and required

to countersign the said bonds, and the Auditor and Treasurer to register them whenever directed by the Governor.

(*b.*) *In case the said company shall within ninety days from the passage of this act file in the Secretary of State's office the evidence of its acceptance of the provisions of this act, and agreement on its part to perform such acts and conditions as are herein contained, and in the matter hereinafter provided, then and thereafter the said bonds shall be delivered by the Governor to said company by installments as follows*, viz.:

(*c.*) Whenever the said company shall have constructed its railroad from a point on the right bank of the Mississippi river, opposite either of the cities of New Orleans, Jefferson or Carrollton, to the Bayou La Fourche, at or near Donaldsonville, in the parish of Ascension, the amount of seven hundred and fifty thousand dollars ($750,000); whenever said company shall have constructed its railroads from the said last-named point, to a point at or near Vermillionville, in the parish of Lafayette, the further sum of seven hundred and fifty thousand dollars ($750,000); whenever the said company shall have constructed its railroad from the said last-named point to the Sabine river, the further amount of seven hundred and fifty thousand dollars ($750,000); and whenever the said company shall have construced its railroad from the said last-named point to a point at or near the city of Houston, Texas, the further and remaining amount of seven hundred and fifty thousand dollars ($750,000).

(*d.*) *And the Governor is hereby authorized and required as soon as may be after the said company shall have filed in the Secretary of State's office, as hereinafter provided, the evidence of its acceptance of and its agreement to perform on its part the provisions of this act, to appoint three commissioners whose duty shall be, when required by him after*

notice from said company, that it has performed the work required by this act to be done to entitle it to payment of any of the installments herein provided for, to examine the said work and to report the condition thereof to the Governor forthwith; and if it shall appear to the Governor that said company has complied with the requirements of this act in relation thereto, he shall forthwith pay and deliver to the treasurer of said company the amount of such installment, taking the receipt of said treasurer therefor, which receipt the Governor shall immediately file in the office of the State Treasurer.

(*e.*) But this grant is hereby made to the said company upon its express agreement made and entered into by the vote of its board of directors, attested and filed as hereinafter provided. That the said company will construct that portion of its said railroad to be constructed between the Mississippi river, opposite the city of New Orleans, or the city of Jefferson or Carrollton, and the Sabine river, in the direction of Houston, and open the same for traffic within three years from and after the filing of said agreement on the part of said company, and that it will in like manner construct that portion of its said road to be constructed between the Sabine river and the city of Houston within six months from and after the time so as aforesaid designated for the construction and opening for traffic of said first-mentioned portion of said railroad; provided that the Legislature of the State of Texas shall in sufficient time for such construction thereof make such provisions as the said company shall deem sufficient to warrant the construction of its said railroad from said Sabine river to the city of Houston within the time herein last aforesaid; and in the event that the said company shall fail to construct its said railroad from the Mississippi river, opposite the city of New Orleans, or the city of Jefferson, or Carrollton, to the said Sabine river, within the time and in the manner aforesaid, then the said

company shall not receive any further issue or installment of said bonds, and shall be bound to return to the treasurer of this State to be canceled, and all of which shall be immediately canceled by him on such return, all bonds which shall have been issued to said company under the authority of this section of this act, and which at the time of such failure shall be owned or held by the said company, and to pay into the treasury of this State such a sum as the bonds which shall have been received and disposed of by said company shall have been sold for, whether payment therefor shall have been received by said company in money, labor, materials, rolling stock, or other valuable consideration; *and annually from and after the issuing of any portion of said bonds there shall be imposed for each fiscal year a State tax of one mill on each dollar of the valuation for each year of all the real and personal property in this State, subject to taxation, which tax shall be assessed, levied and collected in current moneys by the annual assessment and collection taxes for each year, in the manner prescribed by law for the collection of other taxes; and the moneys derived therefrom shall immediately on collection be paid into the treasury of this State as a distinct fund, and kept as a separate account; and such moneys and all the moneys received from said company as hereinbefore provided shall be applied in each and every year; first to the payment of the interest as it shall accrue on said bonds, and the balance in each year shall be applied to the purchase of said bonds, and such tax shall continue to be so assessed, levied, and collected in each and every year until all the interest and principal of said bonds which shall from time to time remain outstanding shall be fully paid, and all bonds and coupons so purchased and paid shall be immediately canceled by the State Treasurer.* And any failure to complete the said railroad from the boundary line between this State and the State of Texas to the city of Houston, resulting from the cause herein-

above specified, shall not release this State from the obligation of the contract hereby entered into with said company, or any part thereof, provided the said company shall construct its said railroad from the west bank of the Mississippi River, opposite the city of New Orleans or the city of Jefferson or Carrollton to the Sabine River within the time and in the manner hereinabove specified therefor, except that this State shall be under no obligation to issue and deliver said last installment of bonds hereinabove provided to be paid to said company on the construction of said road from the Sabine River to Houston. And any temporary failure not intentional on the part of said company, its successors, or assigns to maintain or keep in efficient operation the said portion of the said railroad of said company, which shall be so constructed within the time and in the manner hereinabove specified, in compliance with said conditions, shall not be considered a breach of said conditions, or deprive the said company, its successors, or assigns of the benefit of the provisions *in this section of this act contained or impair the force and obligation of the same, as a contract forever binding upon the State.*

SEC. 8. *Be it further enacted &c.,* That all the laws or parts of laws heretofore passed inconsistent with this act are hereby repealed so far only as they are in conflict with the provisions of this act; but no law or part or provision of any law not in conflict with this act shall be repealed by the effect of this clause upon other parts or provisions of the same law. That this act shall take effect as a law from and after its passage, *and that the said company may make its provisions and the provisions of the acts heretofore passed by the State of Louisiana securing rights and franchises to the said company, binding contracts between the said State and the said company by filing in the office of the Secretary of State*

for the State of Louisiana, within ninety days from the date of the passage and approval of this act, a written acceptance of and agreement to perform the provisions of this act, signed by a majority of the directors of said company, and when so accepted, the rights and franchises granted by this act and all rights and franchises so heretofore granted by the State of Louisana shall be deemed to be (and *shall be*) *binding contracts between the State of Louisiana and the said company, and shall not be impaired, disturbed or modified by subsequent legislation, except with the consent and on the petition of said company.*

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved, February 21st, 1870.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

GEO. E. BOVEE,
Secretary of State.

C.

(No. 45) of 1871 (26TH APRIL, 1871) OF THE LAWS OF THE STATE OF LOUISIANA, ENTITLED :—

"An act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, under an act of the General Assembly approved February 21st, 1870, by subscription on the part of the State to the capital stock of said corporation, and to regulate the conditions of such subscription, and to secure the construction of the road of said corporation from Vermilionville to Shreveport."

SECTION 1. (a.) *Be it enacted by the Senate and House of Representatives in General Assembly convened,* That the the Governor of this State be and is hereby authorized to subscribe for twenty-five thousand shares of $100 each of the capital stock of said corporation on behalf of this State, and to receive the certificates of stock therefor as payment shall be made for the same, which certificates shall be deposited by him in the office of the Treasurer of this State, and shall not be assignable or transferable except by the authority of the General Assembly.

(b.) *And be it further enacted, &c.,* That whereas the subscription for stock and the issue of bonds therefor herein provided are intended *to extinguish the obligation of the State to endorse or guarantee the second mortgage bonds*

of said corporation, under the act of the General Assembly relative to said corporation, approved February 21st, 1870, and as a discharge of either party from all obligations for the issue, endorsement, guarantee, and security of said mortgage bonds as provided in the fourth section of said act; the said corporation shall be required, at or before the complete issue of the said bonds, to file with the Secretary of State a full release and acquittance of the obligations of the State so created to guarantee said mortgage bonds, and for which the provisons of this act are designed as a substitute and discharge; and the said corporation shall, by its express agreement made and entered into by the vote of its board of directors, and attested by its seal and the signature of its secretary, obligate itself to commence that part of its railroad from Vermilionville to Shreveport within six months, and to complete the same within the time limited therefor in said act of the General Assembly: *Provided*, That the said corporation may purchase from this State the said shares of stock at their par value, at any time prior to the maturity of the bonds issued therefor, and may pay for the same in lawful money or in any of the bonds of this State at their par value.

SEC. 2. *Be it further enacted, &c., That for the payment of said subscription bonds of this State shall be issued, signed by the Governor and Secretary of State, and sealed with the seal of the State, payable not less than thirty-five, nor more than forty years from their date, with interest at the rate of eight per cent. per annum, payable semi-annually in the city of New York, on the first days of January and July of each year, for which interest coupons bearing the fac-simile of the signature of the Treasurer of the State shall be attached to the bonds,* and annually from and after the issuing of the said bonds or any part thereof,

there shall be imposed for each fiscal year a state tax of one mill on each dollar of the valuation, for each year, of the real and personal property in this State, subject to taxation, which tax shall be assessed, levied, and collected in current moneys by the annual assessment and collection of taxes for each year, in the manner prescribed by law for the collection of other taxes, and the moneys derived therefrom shall immediately on collection be paid into the Treasury of this State as a distinct fund, and kept as a separate account; and such moneys and all moneys received from said company for dividends on said stock shall be applied in each and every year, first, to the payment of the interest as it shall accrue on the said bonds, and the balance, in each year, shall be applied to the purchase of said bonds; such tax shall continue to be so assessed, levied and collected in each and every year until all the interest and principal of said bonds, which shall from time to time remain outstanding, shall be fully paid; and all bonds and coupons so purchased and paid, shall be immediately canceled by the said Treasurer.

SEC. 3. *Be it further enacted, &c.*, That from and after the subscription aforesaid and the issue of certificates of stock, and during the time the State shall own the same, the State shall be represented at the corporate meetings of the stockholders; and in the Board of Directors to be chosen by the other stockholders under the charter of their incorporation by the Governor of the State for the time being, or by his proxy or by another director to be designated by the governor, whose duty it shall be to attend all the meetings, and perform all the duties incident to the office of directors, but that the directors thus appointed shall not vote in the elections of the Board of Directors provided for in the act of incorporation.

SEC. 4. *Be it further enacted, &c.*, That this act shall take effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved April 20th, 1871.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

GEO. E. BOVEE,
Secretary of State.

IN THE

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1880.

No. 7.

JOHN S. WILLIAMS

AND

WILLIAM H. GUION,

PLAINTIFFS IN ERROR,

vs.

THE STATE OF LOUISIANA,

CHS. CLINTON, *Auditor*, ET ALS.

Brief of the Defendant in Error, on the merits.

The State sought to arrest appropriations by the Legislature, made during the sessions of 1871 and 1872, for purposes not warranted by law.

We have concern herein only with paragraphs 12 and 30 of the State's petition—in which it is alleged that appropriations for the payment of interest on and bonds, issued by virtue of Act 95, approved April 20, 1871, entitled "an act to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile and Chatanooga Railroad Company, etc.," are null and void, because said bonds were issued in contravention of the constitutional provision, promulgated December 15,

1870, inhibiting the increase of the State debt beyond twenty-five millions of dollars, which it had already reached.

To these proceedings the New Orleans, Mobile & Texas Railroad Company (the successor in name of the New Orleans, Mobile & Chatanooga Railroad Company) intervened, alleging in substance interest in the bonds, and injury by the action of the State.

That the bonds described, issued to intervenor, are legal and valid.

That they were issued according to law, in payment of stock issued to the State, and still owned by her.

Upon issue thus made up, the injunction of the State, as to these bonds, was dissolved; but upon appeal to the Supreme Court, this judgment was reversed, and the case remanded for further proceedings, and to take evidence as to the fact whether or not the company had failed to fulfil the conditions of the act, on fulfilment whereof alone States' obligation attached. (Record, p. 18.)

It was not until November, 1874, that Williams and Guion, appeared as parties to the suit, then alleging themselves to be owners for value and before maturity of bonds issued under 95, of 1871, purchased in July, 1872, at highest market rates, in reliance of the promises contained in and evidenced by said bonds, and without notice of any fact tending to affect their validity.

An appeal was taken from a judgment adverse to intervenors, and the appellate court affirmed that judgment of the lower court.

From this final decree error has been sued to this tribunal.

The question presented and decided was, whether or not the issue of bonds under Act 95, approved April 20th, 1871, was in contravention of the constitutional amendment, inhibiting the increase of the State debt.

"This was the subsisting obligation of the State when the constitutional amendment limiting the State debt to $25-000,000, went into operation in November, 1870. As the amount of that limitation had already been reached, the general assembly could not reach a debt thereafter," says the organ of the court.

The concurring Justice states the question to be: "The bonds were issued without the authority and against the authority of the State, which had prohibited the increase of the public debt. The State through its amendment to the condition in 1870, peremptorily forbade such issuing." (Record, p. 125.

The Chief Justice's dissenting opinion, shows the decision of the self-same question.

Argument.

The statement shows that the question necessarily involved and solely decided, was the existence *vel non* of a large contract, a very different question from that involving the validity of an act impairing the obligation of an admitted contract, protected by the Constitution of the United States.

There is no occasion to repeat here what we have said in the brief on the motion to dismiss.

At the outset the Court will observe that all the pretensions of the plaintiff in error are based upon bonds, dated April, 24th, 1871, issued under Act 95, of April 20 1871, so far as the pleadings are concerned. (Record, page 30.)

It is only when the validity of these bonds are confronted with the insuparable barrier raised against them by the Constitutional amendment of 1870, limiting the possible increase of the State debt, that an effort, *arguendo* is made to infuse the breath of vitality into these bonds, borrowed from the supposed obligations of the State under Act of

1869 and 1870, relative to the Mobile and Texas Railroad Company.

A consideration of section 4, of the act of 1870, shows the connexion between the two acts, having any reference to the matter in hand, consists in the application of the provisions of the act of 1869, concerning the endorsement of second mortgage bonds to the branch roads therein authorized to be built.

There is, therefore, no comfort to be drawn from this act; and we are remitted to the consideration of the act of 1869 to determine, whether or not, the condition of affairs existing under it in 1871, were such as to help out the pretensions now set forth.

It seems conceded that if the contract of April 24, 1871, stands by itself, it is void for being in violation of the self-acting constitutional provision of 1870, prohibiting the increase of the State debt, as the prescribed limit, was exceeded at the date of the adoption of the limitation and thereafter.

Let us concede for the argument, that in April, 1871, the State was saddled with a conditional obligation to endorse the mortgage bonds of the Mobile and Texas Railroad Company under act of 1869.

Then it follows that holders of obligations issued thereunder had simply the right to enforce such obligations on the happening of the conditions under which they were issued, noth ingmore.

They had a perfect right, in law, to renounce such contingent conditional right, they had the right to destroy it with or without consideration. If we look at the legislation it is not difficult to discover what the company, then alone interested in the conditional right, chose to do with it; it had not fulfilled the conditions, or any of them, to make the right available, and it was certain it would not; the endorsement, by the State, of its own bonds, issued on

an imaginary road, was of no avail, apparently, and hence it said to the legislature: I desire to relinquish, now and hereafter, my conditional right to have the State's endorsement of my bonds. I have neither surveyed nor built my road as a condition to your endorsement of my intended bonds. I can not issue them, and the State can not endorse a bond not *in esse*. I therefore relinquish any possible right I have under act of 1869; and, as if bent upon leaving no possible doubt of its purpose, we read in Section 1, of act 95 of 1871: "That whereas the subscription for stock, and the issue of bonds therefor herein provided, are to *extinguish* the obligation of the State to endorse and guarantee the second mortgage bonds of said corporation under the act of the general assembly relative to said corporation, approved February 21, 1870, and as a discharge of either party from all obligations for the issue, endorsement, guarantee, and security of said mortgage bonds as provided in the fourth section of said act."

It is thus apparent that in consideration of its own release of the conditions imposed upon the company, it consented to, and did relinquish, any and all rights of endorsement of its bonds by the State, which it then possessed, conditionally or otherwise. It had a perfect right to do so; it did do so, and we submit that the recital herein quoted, would be a perfect bar to any action which the company might advance, based upon the former right, conditional to the endorsement of the State.

The fact that the State then agrees to, and proceeds to do else, totally different, nowise affects the legal *status* applicable to these facts; they remain and carry their legal consequences.

The position derives great force from consideration of Article 2181, et. seq., old Code of Louisiana, a statute applicable to the present issue.

"Novation is a contract consisting of two stipulations—one to extinguish an existing obligation, the other to substitute a new one in its place."

"The pre-existing obligation must be extinguished, otherwise there is no novation."

"Novation takes place * * where a debtor contracts a new debt to his creditor—which new debt is substituted to the old one which is discharged."

"It is not presumed the intention to make it must clearly result from the terms of the agreement, or by a full discharge of the original bill."

Here we have a perfect compliance with the requirement of the statute—

1st. An express agreement to extinguish the first obligation, and its extinguishment as to both parties.

2d. The substitution of a bond by the State for its conditional obligation to endorse the Company's bonds.

What, then, remained of the former obligation after April 20th, 1871? Nothing—absolutely nothing—by the express volition of all parties.

The issue, then, of April 24, 1871, was, in the language of our law, "the substitution of a new debt." The origin and source of a new debt created, at that moment, irrespective and independently of the former, nay, its very existence, based upon the annihilation of all anterior obligations; and the whole act bears the impress of the truth of this position.

Whether, then, up to this moment, a liability rested on the State is immaterial, because, by their own act, the Company and State agreed absolutely to put an end to whatever contingent liability and obligations existed reciprocally—that something entirely different might be done. It chances that something else is in direct viola-

tion of a prohibitory law, and is, therefore, null and void. It will not be contested that a bond issued without authority is void in any hand.

We have till now, argued upon the hypothesis that, at the date of the act of April, 1871, there was a subsisting conditional obligation moving from the State.

Looking into the opinion of the Supreme Court of Louisiana—as the court will, under the authority of *Murdock* vs. *City of Memphis*, 20 Wallace, 633—as part of the record, we learn, as a fact found, that "the conditions precedent have not happened. The conditional obligation of the State resulting from the legislation of 1869 and 1870 has not ripened into an unconditional obligation. *It can never ripen into an unconditional obligation, because the periods within which it might become so, by the performance of the conditions by said Company, have all passed, and the conditional obligation of the Company has now lapsed.*" Record, p. 125

It is in vain that our learned adversaries, to avoid the crushing effect of their finding upon this clients, held as they are, on their own theory to the knowledge that whatever rights they posessed, as flowing from the acts of 1869 and '70, were held upon the fulfillment of the precedent conditions devolving upon their authors as part of their contract, exclaims, that they were entitled to infer that in November–December, 1870, there was an absolute obligation on the part of the State to guarantee all the second mortgage bonds of the Company, &c.

He who holds and claims the benefits of a conditional obligation, without the fulfillment of which conditions the liability does not attach, holds the affirmative of proving the fulfilment of the conditions as a preliminary to recovery; but as shown, we have not left this issue to conjecture, for it was proven and the fact found that the liability of the state lapsed, because of non-fulfilment of conditions.

The authorities in 92 U. S. and 13 Wallace are inapplicable because here is no case where the fulfilment of the conditions of issue is certified by the tribunal having the right to decide. The question is simply one of fact, decided now, and for the first time adversely, and not upon the bond held.

A careful examination of the authorities cited from Louisiana, to establish the validity of the bonds in controversy, will demonstrate them to fall far short of this purpose. In no one of these cases was the question of the validity of these bonds raised.

In *State ex rel. Salomon and Simpson* vs. *Graham*, 23 La. 405, the sole question was, whether the contingent liability of the State should be taken into account to decide whether or not the debt limitation under the amendment of 1870 had been reached? The Court held the affirmative, for the reason that the debt might become absolute, and the question could not be prejudged.

In *State of Louisiana* vs. *McGinnis*, 26 Annual, 560, the court asserted that there was no proof that the company had failed to comply with its contract, and that the State could therefore collect the tax; but it is evident that the court, under a proper state of facts, would have relieved the tax-payer.

The case of *the State of Louisiana* vs. *North Louisiana & Texas Railroad Company*, 25 Annual, 65, is readily distinguished from the present.

In that case the court held that the act 67, of 1872, provided for a substitution of securities simply, viz: the stock of the company, instead of the second mortgage, the original liability remaining the same, and as it had been incurred prior to the constitutional amendment of 1870, and subsisted. not affected, by it.

It is perfectly apparent that the question, whether con-

tingent liabilities depending upon certain acts of the Legislature, shall be taken into an account to ascertain the possible existing indebtedness of a State, is a very different one from that of ascertaining upon proper issues, the validity *vel non* of part or all of that contingent liability.

The former question may, without the shadow of inconsistency, be decided affirmatively, and the latter negatively, —this, the Supreme Court of Louisiana has done.

To resume, therefore, we say—

1st. That there is here no federal question for this Court to pass upon.

2d. That in any event, the Constitution of the United States only protects admitted contracts; that its courts will only prevent States from defeating the enforcement of such contracts sought in proper proceedings. 10 Wallace, 515.

3d. That the acceptance of the Act of April 20, 1871, was a voluntary and intended annihilation of all the rights of the Mobile and Texas Railroad Company, and of the consequent possible liability thereunder, of the State.

4th. That the issue of $2,500,000 of bonds under that Act, was a new debt, under an independent and distinct stipulation, creating a new debt, violative of the Constitutional Amendment of 1870, and therefore null and void.

The judgment should not be disturbed.

Respectfully submitted,

April, 1881.

GUS A. BREAUX,
JAMES LINGAN,
JNO. MCENERY.
for defendant in error.

Filed.

Supreme Court of the United States.

OCTOBER TERM, 1880. No. 7.

JOHN S. WILLIAMS AND WILLIAM H. GUION

vs.

THE STATE OF LOUISIANA, CHARLES CLINTON, AUDITOR.

ADDITIONAL BRIEF OF PLAINTIFF IN ERROR ON MOTION TO DISMISS.

If the contract sought to be maintained were a contract made between private individuals, as to which contract it is claimed that the State passed a law impairing it, perhaps it would be reasonable to say that if the State court of last resort, standing in the position of an impartial arbiter, says that there is no contract, this court might be concluded by such a judicial determination of this preliminary question.

When, however, the contention is that the contract was made with the State, as in this case, our contract being ade with the State of Louisiana, are you to permit a branch of the government (the judiciary of the State) which made the contract with us *finally* to determine whether *vel non* we have a contract with the State of which it forms a part, and thus, in the language of Judge Story, in Martin *v.* Hunter's Lessees, 1 Wheaton, 357, "evade at pleasure e true construction of the section." And that, too, when e existence of that contract depends upon an exposition

of State statutes, which are what the State judiciary interprets them to be.

Are you going to let a part of the whole with which we contract *finally* to say what that contract was, or that no contract was made? Or, let a part of the very party with which we made our contract repudiate it by a process which that part chooses to call a decision and *finally to determine* that the State is not bound? If such were the law, then the doctrine so repeatedly laid down by this court, that the State can bind itself by contract, must be supplemented by the statement, "except in such cases where a branch of the State government (its judiciary) can be induced to say that no contract was made." Moreover, the title set up in this case for relief by this court is apparent upon the face of the record, and immediately respects the decision of the principal question in this cause.

These questions have frequently been before this court, and, on writs of error to State courts, repeatedly decided that the Supreme Court of the United States will itself construe a law which it is claimed makes a contract for the State herself, and also of the State Constitution, and will pay no attention to the construction which the highest court of the State has put upon it, when such decision holds that the law does not make a contract.

Jefferson Branch Bank *v.* Skelly, 1 Black, 436.

The obligation imposed upon the Supreme Court of the United States by the Constitution, to determine whether a State statute impairs the obligation of a contract, demands that the court decide independently of State courts whether there is a contract, though it be in the form of legislative enactments.

The Supreme Court of the United States, in such cases, is not bound by the construction given by the courts of the States to State legislation and State constitutions.

The appellate power would be of no value unless the Supreme Court of the United States could so decide independently of all adjudication by the State court.

Same principle reasserted in—

Franklin Bank *v.* State of Ohio, 1 Black, 474.

Same principle decided in—

Wright *v.* Sill, 2 Black, 544.

Bridge Proprietors v. *Hoboken Company*, 1 Wall., 116:

Where a State statute creates a contract and a subsequent statute is alleged to impair its obligation, and the highest court in the State construes the first statute in such a manner as that the second statute does not impair the contract, whereby the second statute remains valid under the Constitution of the United States, the validity of the second statute is *drawn in question*, and the decision is *in favor* of its validity within the meaning of the twenty-fifth section of the judiciary act.

The Federal Supreme Court may acordingly re-examine and reverse such judgment or decree of the State court. (See especially pages 144 and 145 of the above case.)

Delmas v. *Insurance Co.*, 14 Wall., 61:

If the decision of a State court is based on a constitutional or legislative enactment passed after the contract is made, the Supreme Court of the United States has jurisdiction to inquire whether such legislation does not impair the obligation of the contract and thereby violate the Federal Constitution.

In the prosecution of this inquiry the Supreme Court must decide for itself whether any valid contract existed where the legislation complained of was had, and in making up its judgment on this question it is not concluded by the decision of the State court.

In *University* v. *People*, 99 U. S., 309:

The same principle is decided, and the Supreme Court went so far as to say that it would construe the Constitution of the State differently from the State court. (See particularly page 323.)

Wright v. *Nagel*, 101 U. S., 791:

The construction by the State court of a statute is not conclusive on the Supreme Court of the United States upon the question whether a subsequent conflicting grant impairs the obligation of a contract.

GEO. W. BIDDLE,
SIMON STERNE,
For Plaintiff in Error.

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Supreme Court of Louisiana.

No. 5768.

STATE OF LOUISIANA,

vs.

CHARLES CLINTON, ET AL.

The New Orleans Mobile and Texas Railroad Company and Williams & Guion, Intervenors.

Appeal from the Superior District Court, parish of Orleans.

A. P. FIELD,
Attorney General.
J. Q. A. FELLOWS,
J. B. COTTON,
Of Counsel.